

EXHIBIT 3

Transcript of Toby McBride
Conducted on November 15, 2024

1 (1 to 4)

	1		3
1	UNITED STATES DISTRICT COURT	1	A P P E A R A N C E S
2	FOR THE DISTRICT OF NEVADA	2	
3	-----x	3	ON BEHALF OF THE PLAINTIFF:
4	JAMES DEPOLETO, : 4	4	PATRICK HARVEY, ESQUIRE
5	Plaintiff, : 5	5	HUSCH BLACKWELL, LLP
6	v. : 6	6	511 North Broadway, Suite 1100
7	TAKEOVER INDUSTRIES : 7	7	Milwaukee, WI 53202
8	INCORPORATED, et al., : 8	8	(414) 273-2100
9	Defendants. : 9	9	
10	-----x : 10	10	
11		11	ON BEHALF OF THE DEFENDANTS:
12		12	DON BENNION, JR., ESQUIRE
13		13	LAW OFFICE OF S. DON BENNION
14	Videotaped Deposition of TOBY MCBRIDE : 14	14	6980 O Bannon Drive, Suite 400
15	Conducted Virtually : 15	15	Las Vegas, NV 89117
16	Friday, November 15, 2024 : 16	16	(702) 333-0777
17	8:17 AM PST : 17	17	
18		18	
19		19	ALSO PRESENT:
20		20	Jesse Castro, Videographer
21		21	
22		22	
23	Job No.: 561276 : 23	23	
24	Pages: 1 - 71 : 24	24	
25	Recorded By: Charlie McGrath, AAERT CER : 25	25	
	2		4
1	Deposition of TOBY MCBRIDE, conducted	1	C O N T E N T S
2	virtually.	2	EXAMINATION OF TOBY MCBRIDE PAGE
3		3	By Mr. Harvey 6
4		4	
5		5	
6		6	E X H I B I T S
7		7	(Attached to transcript.)
8		8	DEPOSITION EXHIBIT PAGE
9		9	Exhibit 1 December 9, 2022 Email 50
10		10	Exhibit 2 Party Receivable Confirmation 64
11		11	
12		12	
13	Pursuant to notice, before Charlie McGrath,	13	
14	AAERT CER, Notary Public in and for the State of	14	
15	California.	15	
16		16	
17		17	
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24		24	
25		25	

Transcript of Toby McBride
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2 (5 to 8)

	5		7
1	P R O C E E D I N G S	1	Q Good. Are you able to hear me okay?
2	THE VIDEOGRAPHER: Here begins media	2	A Yes, sir.
3	number 1 in the videotaped deposition of Toby	3	Q Okay. Good. Could you please state
4	McBride in the matter of Depoletto v. Takeover	4	and spell your full name for us, please?
5	Industries, Incorporated, et al., in the United	5	A Toby McBride, T-O-B-Y, M-C-B-R-I-D-E.
6	States District Court for the District of Nevada,	6	Q And what's your current address, sir?
7	Case number 2:22CV02013.	7	A 7426 -- I mean, 2948 Monticello Drive,
8	Today's date is November 15th, 2024.	8	Stockton, California, 95209.
9	The time on the video monitor is 8:18 a.m. The	9	Q Any plans to move in the next year or
10	remote videographer today is Jesse Castro,	10	10 so?
11	representing Planet Depos. All parties at this	11	A Not right now, no. No.
12	video deposition are attending remotely.	12	Q Okay. Could you walk me through your
13	Would Counsel please voice identify	13	13 education, please, just high school onward?
14	themselves and state whom they represent?	14	A High School then straight to --
15	MR. HARVEY: Patrick Harvey for the	15	straight to work, so --
16	plaintiff.	16	Q What year did you graduate high school?
17	MR. BENNION: Don Bennion for Defendant	17	A '86.
18	Toby Maguire, who's being deposed today, as well	18	Q And where did you go to high school?
19	as the -- the other five defendants. I'll list	19	A Kennedy -- John F. Kennedy.
20	them if you want me to, but I think the caption	20	Q What state?
21	speaks for itself.	21	A California.
22	THE WITNESS: McBride.	22	Q In Stockton?
23	THE VIDEOGRAPHER: The court reporter	23	A No, Sacramento.
24	today is Charlie McGrath, also representing Planet	24	Q Have you ever been deposed before today?
25	Depos. The witness may now be sworn.	25	A No, sir.
	6		8
1	COURT REPORTER: All righty. And I	1	Q I know you have a new lawyer as of last
2	just have a short read-on statement because I'm in	2	night, but am I correct in assuming that you had a
3	California.	3	3 chance to talk to either him or your former lawyer
4	I am a notary authorized to administer	4	4 and go over the deposition rules, things like
5	oaths, and this deposition will be recorded by	5	5 answering out loud and things like that?
6	electronic means. All parties understand and	6	A Yes, sir.
7	agree that any certified transcript produced from	7	Q Okay. So I don't need to go over those
8	the recording of this proceeding is intended for	8	8 again?
9	all uses permitted under applicable, procedural,	9	A No. We're good.
10	and evidentiary rules and laws, and shall	10	Q Okay. Thanks.
11	constitute written stipulation. The parties	11	The one that I am going to reiterate is
12	stipulate to the use and certification of this	12	12 that if I ask a question and you don't understand
13	testimony consistent with applicable law of such.	13	13 any portion of it, feel free to let me know. I'm
14	Hearing no objection, I will now swear the witness.	14	14 happy to rephrase it to make sure that we're on
15	All right, sir, if you could raise your	15	15 the same page before you answer; is that fair?
16	right hand for me?	16	A Yes, sir.
17	Whereupon,	17	Q And the flip side of that, though, is,
18	TOBY MCBRIDE,	18	18 if you answer one of my questions, I'm going to
19	being first duly sworn or affirmed to testify to	19	19 assume that you understood it; is that fair?
20	the truth, the whole truth, and nothing but the	20	A Yes, sir.
21	truth, was examined and testified as follows:	21	Q Okay. Thank you.
22	EXAMINATION BY COUNSEL FOR THE PLAINTIFF	22	Did you review any documents to prepare
23	BY MR. HARVEY:	23	23 for your deposition today?
24	Q Good morning, Mr. McBride.	24	A Just the complaint, that's it.
25	A How are you?	25	Q Nothing else?

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3 (9 to 12)

	9		11
1	A No, sir.	1	at, where we'd consult for four or five months or
2	Q Okay. Can you walk me through,	2	I'd end up taking a position, so --
3	quickly, your employment history for the last 10	3	Q And when you say consult, what
4	years?	4	specifically did you do?
5	A Ten would go back to when, '14?	5	A So I would come in to a beverage
6	Q Yeah, ballpark.	6	company to see where they were at. If they were
7	A So I -- I'm 32 years in the beverage	7	at the beginning stages, seeing the capital they
8	industry, so I helped build brands on the national	8	had, make sure it was being appropriate in the
9	level through Budweiser and Miller distributors,	9	right positions to whether it was production or --
10	10 national through retail. I'm one of three guys	10	10 or marketing, and then trying to get them
11	11 that does that throughout the nation.	11	11 benchmarks, building them a foundation regionally,
12	So I mean, before IGNITE, I'm trying to	12	12 not nationally, to start building their beverage
13	remember where I was at, but IGNITE was 2019. So	13	13 brand. Consulting also --
14	14 over a year, Philip Dan's brand, resigned from	14	Q You -- you -- oh, go ahead.
15	15 that, and that's how kind of started Takeover.	15	A Go ahead. Also on --
16	16 I've consulted here and there for the last 10, 15	16	Q No, (crosstalk).
17	17 years, consulting meaning I get brought into a	17	A Yeah, also on formulations. Sorry.
18	18 beverage company and either fix it or get it going.	18	Q And when you say formulations, you mean
19	Q What was your title when you were	19	19 you put together the ingredients?
20	working at IGNITE?	20	A We help -- we assist, yeah.
21	A CEO of the beverage side.	21	Q Okay. Other than working for One Elite
22	Q What was the other side?	22	22 during that time frame, were you working for
23	A They had vapes and stuff like that.	23	23 anyone else?
24	And IGNITE was a THC marijuana company and then	24	A No.
25	broke into energy drinks and alcohol. That's why	25	Q Okay. So then you started at IGNITE.
	10		12
1	I got brought in. I had nothing to do with the	1	I think you said 2019; is that correct?
2	other side of it, separated.	2	A 2018, 2019, yeah.
3	Q Where did you work before IGNITE?	3	Q And you said you worked there for about
4	A I was just consulting for other	4	4 a year?
5	beverage companies.	5	A Yeah.
6	Q Were you doing that through an LLC or	6	Q And why did you leave IGNITE?
7	something or --	7	A I resigned. I don't want to really get
8	A Yeah, through -- Mike and I had a --	8	8 into that. That's IGNITE's -- those are IGNITE's
9	had a company, One Elite.	9	9 things. There was just things going on there that
10	Q I'm sorry. I didn't hear what you	10	10 I walked away with my team and --
11	said. What?	11	Q Why did you walk away?
12	A We had a company called One Elite that	12	A They were spending money in places that
13	was an LLC.	13	13 money shouldn't be spent in and we didn't want to
14	Q And when you say Mike, do you mean Mike	14	14 have no part of it.
15	Holley?	15	Q And when you say they, who's they?
16	A Yes, sir.	16	A IGNITE.
17	Q How long were you consulting through	17	Q Who -- was there a particular
18	One Elite, LLC?	18	18 individual?
19	A I'm not even sure if it was an LLC --	19	A I -- I don't want to -- that has
20	it was an LLC. I'm trying to remember if it was	20	nothing to do with this. I don't want to get into
21	21 or not. We just consulted independently, so --	21	21 that. I resigned from that and --
22	Q For approximately how long before you	22	Q That's not how this works. You don't
23	started working at IGNITE?	23	23 get to pick and choose what questions you answer.
24	A Off and on for five or six years,	24	24 So why did you resign?
25	depending on where -- what beverage company I was	25	A I resigned because I was on a board

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4 (13 to 16)

	13		15
1 call and heard things I shouldn't have heard, so		1 Q Anything else?	
2 that's why I resigned.		2 A -- and the gamer shot was.	
3 Q You resigned?		3 Q Are any products still being sold under	
4 A Yeah.		4 the brand name NXT LVL?	
5 Q When did you resign?		5 A Not to my knowledge.	
6 A Not that I recall, I think it's		6 Q Does Takeover have any employees today?	
7 September.		7 A Not to my knowledge.	
8 Q Of 2019?		8 Q Are you still working for Takeover	
9 A Yeah.		9 today?	
10 Q And did you work anywhere else?		10 A No, I'm not.	
11 A 2020 -- 2020. Sorry.		11 Q When did you stop working for Takeover?	
12 Q September 2020 is when you resigned?		12 A January '23.	
13 A Yeah.		13 Q When Takeover was first founded in	
14 Q Did you work anywhere else in between		14 early 2021, what was your title there?	
15 there and working for Takeover?		15 A CEO.	
16 A No.		16 Q Did you have that title the entire time	
17 Q And as I understand it, around January		17 you were at Takeover?	
18 2021, you, Mr. Holley, and Mr. Pavlik founded		18 A Yes, sir.	
19 Takeover; does that sound correct?		19 Q Why did you leave in January 2023?	
20 A Yes.		20 A Stress level, too much --	
21 Q And can you just generally describe		21 Q What do you mean by that?	
22 what is Takeover Industries, Incorporated?		22 A It was too much for me to handle at	
23 A It's just a beverage company.		23 that point. I needed to get my life back on track.	
24 Q What types of beverages?		24 Q Too much --	
25 A We were doing hydrogen water at that		25 COURT REPORTER: Sorry. You cut out.	
	14		16
1 time.		1 BY MR. HARVEY:	
2 Q When you founded it?		2 Q Why was it too much for you to handle?	
3 A We founded the company and then came		3 A Just too much drama, too much stress	
4 into hydrogen water.		4 drove me --	
5 Q And you said, at time. Did you -- did		5 Q Can you say a little bit more? Go	
6 Takeover branch out into other beverages other		6 ahead.	
7 than hydrogen water?		7 A -- put me in a place I didn't want to	
8 A There was a shot down the road, but I		8 be, so I had to change my life, change my	
9 don't classify that as a beverage.		9 perspective, fix my life.	
10 Q And you're referring to the gamer shot?		10 Q Can you be a little bit more specific	
11 A Yes, sir.		11 about what you're talking about?	
12 Q When did Takeover start selling gamer		12 A No.	
13 shots?		13 Q So something at Takeover is causing you	
14 A May, June, that I recall. I can't		14 stress, but you can't delineate what that was?	
15 recall. I didn't -- I didn't -- I don't remember		15 A Reliving this is very, very difficult	
16 that much about when that came.		16 for me, so my apologies. The stress of what we	
17 Q When you say May, June, do you mean		17 got put through, the stress that Jason Tucker put	
18 May, June 2021?		18 us through, the things that we had to go through	
19 A Yeah.		19 to get our company back made me -- had to walk	
20 Q What is the brand NXT LVL, spelled		20 away. I still feel it to this day.	
21 N-X-T, L-V-L?		21 Q And what do you mean -- when you say	
22 A Part of Takeover.		22 what you got put through, what specifically did	
23 Q What products were sold under the brand		23 you --	
24 name NXT LVL?		24 COURT REPORTER: I'm sorry. Your	
25 A Hydrogen water --		25 question -- your question cut out again.	

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5 (17 to 20)

1 MR. HARVEY: Are you hearing
2 (inaudible)?

3 COURT REPORTER: The -- that -- the
4 question cut out as well.

5 THE VIDEOGRAPHER: Counsel, I'm having
6 -- I'm having a little bit of difficulty. You are
7 cutting out maybe three or four times thus far.

8 MR. HARVEY: Hmm. My audio marker
9 shows that it's working every time I talk, on the
10 bottom left.

11 THE VIDEOGRAPHER: It'll stop -- it'll
12 -- it'll stop a little bit, Patrick, at the end.

13 It'll just pivot like -- like that, so --

14 MR. HARVEY: Okay. Well, let me know
15 if -- if you don't hear the end of one of my
16 questions. We'll try and plow through it. I
17 don't really know what to do. This is the usual
18 microphone I use for these.

19 BY MR. HARVEY:

20 Q You said that the stress of what you
21 got put through. What specifically did you get
22 put through that you're referring to?

23 A I mean, the monotony of Jason Tucker
24 putting out lies on us, separating me and my
25 partner for a year with lies, having to relive

1 that again, having to deal with the attorneys and
2 trying to get our company back was just too much
3 for me. And I had the better --

4 Q What specific -- oh, go ahead.

5 A No, I'm done. I'm done.

6 Q What specific lies did Mr. Tucker tell
7 about you?

8 A I-- I-- I-- I mean, everything there
9 is out there that he's put out there on social
10 media is -- the hit piece on BevNET, I mean, go
11 read it. I mean, I don't have time to -- there's
12 -- there's too much stuff that -- that he did that
13 it's -- you know, I just -- I don't want to relive
14 that stuff. It's just too much. I'm in a better
15 place in my life right now that -- reliving things
16 that this guy did to us is -- it's all in the
17 Court documents. It's all in. It's just the
18 slander, the -- makes me nauseous.

19 Q You said a hit piece?

20 A Pretty much a hit piece. A buddy of
21 his that used to work for us when we had Manny
22 Pacquiao as part of the company, a writer, I can't
23 remember his freaking name now, did a hit piece on
24 me, Mike, and Joe. That was all lies. They wrote
25 it, put it out the day that -- I believe after --

17

1 after James's note was -- after we got out of
2 court in AriZona, I believe that piece went out on
3 us. I think it was November. I couldn't believe
4 -- BevNET still has it. You could pull it up.

5 That was all lies.

6 Q And this was in a publication?

7 A Yes, sir. BevNET is a -- is a place
8 where, in the beverage industry, we all go, so
9 distributors, suppliers, retailers. It's a
10 website for the beverage industry.

11 Q What did you -- I didn't what you
12 called it. What is it called?

13 A BevNET, B-E-V-N-E-T. So anybody that's
14 in the beverage industry, liquor, alcohol,
15 non-alcohol, beer, we all are on that website. So
16 when somebody -- BevNET is for, like, when brands
17 start or brands do press or get retail, they post
18 everything on BevNET. Pretty much just, like, a
19 -- it's updated every 30 minutes, I believe.

20 And so when press gets put out if a
21 company is bought, like, GHOST or something like
22 that that just sold for 990 million, that -- that
23 information is put on BevNET. If you're looking
24 for work, you go to BevNET.

25 So there's millions of people that see

19

18

1 that website, people in my industry that know me
2 very well. So when that hit piece went out, you
3 can imagine the phone calls that I got, but people
4 know who I am. I've built my reputation in this
5 industry very strong. I'm not one to do what was
6 -- was told that we did, so they all knew. So we
7 got our chance to rebuttal it, I believe, a month
8 and a half later, that showed the documents from
9 court that showed it was all lies.

10 Q Where did you start working after you
11 left Takeover in January of 2023?

12 A I consulted for a company out at Canada
13 called Exponent.

14 Q Called what?

15 A Exponent, E-X-P-O-N-E-N-T.

16 Q And from when to when did you do that?

17 A January until the end of the year.

18 Q Until the end of 2023?

19 A Just about, yeah.

20 Q Did you go to work after that?

21 A I've just been consulting and taking
22 time off.

23 Q And are you doing this through an LLC
24 or some other business?

25 A I do it through My Krazy Leprechaun.

20

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6 (21 to 24)

	21		23
1	Q Is that an LLC or what is it?	1	A There it is.
2	A Yeah. It's out in Nevada.	2	Q T-Z -- T-Z-A-N-E-T-A-T-O-S; does that
3	Q Now, I apologize. I've been under the	3	sound right?
4	weather this whole week, so I'm probably going to	4	A That's -- yeah. You're -- that's
5	be coughing quite a bit today.	5	better than what I had.
6	A So have I.	6	Q Okay. So that was one individual that
7	Q When you -- sorry to hear about that.	7	you named that worked for Takeover. Who else
8	A Yeah.	8	worked there?
9	Q When you left in January 2023, how many	9	A Mike Costello.
10	employees did Takeover have at that point?	10	Q Anyone else?
11	A Just Mike and Joe.	11	A Kerby Fortner.
12	Q And that's Mike Holley and Joe --	12	Q What was Mr. Fortner's role?
13	A Mike, CSO Joe Pavlik.	13	A Gamer, social media, stuff like that.
14	Q What were their titles at that time?	14	Q What was Mr. Costello's role?
15	A Mike was COO and Joe was the CSO, chief	15	A They're just sales guys.
16	science officer.	16	Q How about Mr. Tzanetatos?
17	Q And you said you don't know if Takeover	17	A Mike and Mike were both the same, just
18	has any employees today?	18	sales guys.
19	A I can't tell you. I don't -- I'm not	19	Q Okay. Anyone else other than those
20	involved.	20	three?
21	Q Do you still work with either Mr.	21	A David was our back end of the house
22	Holley or Mr. Pavlik?	22	guy, does all the -- I forgot David's last -- is
23	A I do not.	23	it Martin? You might have it. I don't -- I don't
24	Q What was the most employees that	24	-- I forgot David's last name.
25	Takeover ever had when you were working there?	25	Q What do you mean by back of the house
	22		24
1	A Mike Tzanetatos --	1	guy?
2	Q Do you mind -- for the court reporter?	2	A Ordering supplies, EID, stuff we need
3	A Say it again?	3	to do with chains or stores, he does all the
4	Q Would you mind spelling that name that	4	computer stuff for that -- shipping, receiving,
5	you just said for the court reporter?	5	affiliates, stuff nobody else wants to do.
6	A Oh, I couldn't -- can I -- can I look	6	Q Any others?
7	on my phone? There's the only way I can tell you	7	A No, sir. Well, me -- me, Mike, Joe,
8	Tzanetatos's -- his last name.	8	and Tucker -- oh, and Tucker's wife, Melissa.
9	Q Yeah, that's fine. Go ahead.	9	Sorry.
10	A One second. I believe it's a Greek	10	Q Jason Tucker?
11	name. Mike -- and I could be butchering it when I	11	A Yes, sir.
12	send it to you when I tell you what it is for	12	Q And then Melissa Tucker?
13	Mike's. Tzanetatos, T-S-O-N-A-T-A-T-O-S (sic),	13	A Yes, sir.
14	Tzanetatos. I can't even remember how to spell	14	Q What were their roles?
15	it. I'm trying to find it on my phone, so sorry.	15	A Melissa was allegedly marketing. And
16	And I can guarantee you I even butchered it on	16	then Jason was -- we made Jason president.
17	here. I'm trying to find his e-mail. Mike T --	17	Q Anyone else?
18	Q Oh, I think I actually might have it	18	A No, that's it.
19	here.	19	Q What was Mr. Pavlik's role?
20	A You might. It should be in the Court	20	A Chief science officer.
21	documents, Patrick. Sorry.	21	Q What was Mr. Holley's role?
22	Q T--	22	A Operations.
23	A I -- I butchered it -- I butchered it	23	Q Anyone else?
24	when I had him as an employee, so apologies.	24	A No.
25	Q T-Z-A --	25	Q How did you become involved in Takeover

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7 (25 to 28)

	25	
1	Industries?	
2	A After IGNITE, we were looking all to do	
3	something again and because I was the only one at	
4	IGNITE -- Mike and Joe weren't there. So just	
5	took the -- do something together, and Joe had	
6	found a shell and we thought we'd give it a go.	
7	Q When you said Joe found a shell	
8	(inaudible) by that?	
9	A Well, he had a -- he had another guy, I	
10	forget his name, that knew Ryan Schadel. Ryan	
11	Schadel originally owned LTNC. And then we worked	
12	a deal to -- in between at that time is Alex.	
13	Alex Guerrero is Tom Brady's trainer.	
14	COURT REPORTER: I'm sorry, could you	
15	say the name one more time?	
16	THE WITNESS: Alex Guerrero.	
17	COURT REPORTER: Thank you.	
18	THE WITNESS: Which is Tom's trainer --	
19	Brady's trainer, and he wanted to speak to me	
20	about a -- a brand he had. So we flew out to	
21	Florida, sat down with Alex, and that's when I	
22	found out about hydrogen water. That's how	
23	hydrogen --	
24	BY MR. HARVEY:	
25	Q You said quite a bit -- you said quite	
	26	
1	a bit there. So Ryan Schadel, how do you spell	
2	his last name?	
3	A Ryan -- Ryan, R-Y-A-N.	
4	Q Okay.	
5	A Schadel -- I believe it -- Patrick,	
6	it's S-C-H-A-D-E-L. He was the original owner of	
7	LTNC, which was the company that we acquired.	
8	Q LTNC is also known as Labor Smart,	
9	correct?	
10	A Yes, sir.	
11	Q That's a different company than	
12	Takeover Industries, correct?	
13	A They're subsidiaries.	
14	Q Which one is a subsidiary of which?	
15	A I believe they're both under Labor --	
16	they're both under LTNC. Labor Smart was Ryan's	
17	company.	
18	Q So am I hearing you correctly that LTNC	
19	was the parent company and then Labor Smart was a	
20	subsidiary of LTNC?	
21	A I believe that's -- that and Takeover,	
22	that's how it broke down. I can't be for sure on	
23	that, but --	
24	Q Were you involved with Mr. Schadel at	
25	all when Takeover Industries, Incorporated, was	
	27	
1	formed?	
2	A I was on calls, but I wasn't in the	
3	weeds with Mike when they were doing it. As far	
4	as percentages, what he -- the debt he owed on	
5	LTNC, the accounting and all that stuff behind it,	
6	I had nothing to do with that.	
7	Q Is it your understanding that Takeover	
8	is a subsidiary of Labor Smart?	
9	A Takeover is under LTNC, so I'm not too	
10	--	
11	Q But LTNC is -- but you told me a minute	
12	ago, I thought, LTNC was the parent company of	
13	Labor Smart, correct?	
14	A That's how I believe they work. I	
15	can't -- I don't -- not for sure about that, but	
16	that's how I'm -- that's my understanding how it	
17	works.	
18	Q And then is Takeover a subsidiary of	
19	just Labor Smart or is it only a subsidiary of	
20	LTNC?	
21	A I believe it's only of -- of LTNC.	
22	It's been a while. Sorry.	
23	Q And what were you saying about Mr. --	
24	your meeting with Mr. Guerrero? What -- can you	
25	say that again? What was the meeting about?	
	28	
1	A Well, that -- that -- he had me -- he	
2	had us come there and look at a product that he	
3	wanted me to see if I could do. So that's when	
4	hydrogen water was put on the table. And I tried	
5	it and I asked him what it was.	
6	He told me what it was. He told me who	
7	he was training with it. He told me this is why	
8	people's careers are extending. That's why Tom	
9	was playing as long as he was playing. Serena and	
10	LeBron playing into their late stages of their	
11	careers is because of hydrogen water. So he asked	
12	me if I could figure out a way to do it better,	
13	and we --	
14	Q When was this meeting with -- I'm	
15	sorry. Go ahead.	
16	A December, before we started --	
17	Q Of 2020?	
18	A Yeah, before we started, yeah --	
19	November, December.	
20	Q Was he involved with the formation of	
21	Takeover?	
22	A No. Alex had nothing to do with the	
23	company.	
24	Q So was he asking you to start a company	
25	for him?	

Transcript of Toby McBride
Conducted on November 15, 2024

8 (29 to 32)

1 A He wanted to see if there was a way I
2 could make the hydrogen water better than the way
3 they were getting it from Texas. And then we were
4 going to bring Alex involved with Takeover at one
5 time, but Ryan and those guys -- Ryan had leaked
6 it somehow, and that kind of killed that off.

7 Q Why would Ryan leaking it have killed
8 that off?

9 A I -- because it got to the -- it got to
10 the shareholders and then they thought Brady was
11 involved when he was never involved. Alex was
12 going to be involved in the early stages. And
13 then it got out to the shareholders. And if you
14 know anything about a public company, that once it
15 gets out, you know, Tom Brady is now an owner, you
16 know, then that got back to us pretty quick.

17 Q When was this?

18 A Same year, 2021.

19 Q Beginning of 2021?

20 A Yeah, of March, April.

21 Q Other than CEO, have you held any other
22 officer positions at Takeover?

23 A No.

24 Q Were you a board member of Takeover?

25 A Yes.

29

31

1 Q How specifically were you convinced
2 that he was lying?

3 A Through my original attorneys and
4 through Mike's lawyers and through the Arizona
5 case, that he was lying.

6 Q What was your -- did you have a
7 specific title as a board member of Takeover,
8 chairman or anything like that?

9 A I don't recall.

10 Q What were your duties and
11 responsibilities as a board member of Takeover?

12 A I don't recall what was on there.

13 Q Did you receive compensation from
14 Takeover?

15 A I had a salary, yes.

16 Q What was it?

17 A 240 a year.

18 Q Was that for the whole time or did that
19 go up or --

20 A No, the whole time.

21 Q And were you paid on a biweekly basis
22 or how were you paid?

23 A Monthly.

24 Q And you continued to receive that until
25 you -- January 2023?

30

32

1 Q From when to when?

2 A The start until January of '23.

3 Q Who else was on the board during that
4 time?

5 A Mike, Joe, Jason.

6 Q The whole time?

7 A No. For the last -- for 2022, Mike was
8 taken off. It was just me, Joe, and Jason.

9 Q Why was Mr. Holley taken off in 2022?

10 A Because of Jason Tucker's lies.

11 Q What do you mean by that?

12 A Jason Tucker made a lot of accusations
13 about my ex-partner and had us believing that he
14 did --

15 Q What, specifically?

16 A Taking money, which he never did.

17 Q Were you responsible for finances while
18 you were working at Takeover?

19 A My name has never been on a bank
20 account in 20 years with any of my partners.

21 Q So how do you know that Mr. Tucker was
22 lying about whether Mr. Holley took money?

23 A I found that out that he was lying when
24 we found out about all this stuff, so October of
25 2023 -- or '22.

1 A No. That's -- I stopped in August,
2 September.

3 Q Of --

4 A '23 -- '22.

5 Q Why did you stop getting paid in
6 September or August of 2022?

7 A Again, Jason Tucker's finagling of
8 maneuvering documents and making up lies, which
9 was --

10 Q You were CEO, correct?

11 A Yes, sir.

12 Q So you outranked Mr. Tucker, correct?

13 A We all worked on a level playing field,
14 but yeah.

15 Q Because he was just the president,
16 correct?

17 A Yes, sir.

18 Q And so how did he specifically going
19 about -- or go about getting your salary to be not
20 paid?

21 A By bringing him -- his attorney at the
22 beginning, which was his attorney at Battleship
23 Stance, Eric Borgard, number one. Eric was --
24 Eric's -- Eric's position was just to be an IP
25 attorney, just come in and protect our IP. That's

Transcript of Toby McBride
Conducted on November 15, 2024

9 (33 to 36)

1 what Battleship Stance is, Jason's Company. It's
2 a company that -- it's an IP company that protects
3 IP, but we found out a lot more about that.

4 So he brought Eric in. We didn't have
5 counsel at that time. So Eric came in and did
6 some IP work for us because we were still securing
7 the NXT LVL name, because it was in competition
8 with another water brand out of New York, so we
9 were negotiating the terms with that. So Eric was
10 -- and was supposed to be taking care of that.

11 And then all of a sudden he's our -- our, you
12 know, company lawyer.

13 So with that and with him putting the
14 case on Mike, which was BS, he then brought in
15 another attorneys, I forget her name, out of
16 AriZona, another personal attorney for him that
17 has his benefit in mind. So them all three
18 together coordinating their efforts to do what
19 they had to do what they did, which was to get us
20 out, which was to separate me and Mike, number one.

21 Q I'm still not following how any of that
22 would have resulted in you not getting a paycheck.
23 How did -- how did he specifically stop you from
24 getting a paycheck when you were the CEO?

25 A Because they alleged that I -- I was

33

1 mean, it's a whole -- I really hate reliving this
2 thing because that's just a place I don't want to
3 go back to, so my apologies. It put me in a place
4 where I contemplated suicide at one point because
5 of what he was doing to me and pushing me into a
6 corner. So I stepped away for 30 days, really, a
7 couple weeks, until we figured out what was going
8 on, what his plan was, and then the judge
9 overturned it --

10 Q When was this -- judge overturned it?

11 A In AriZona -- whenever the AriZona --
12 whenever everybody was in AriZona. I wasn't
13 there. I believe it was October.

14 Q Where you were gone for 30 days --

15 A I believe it was October. I believe it
16 was November. So the whole month of October, I
17 was gone.

18 Q So then when you came back, why didn't
19 she start getting paid then?

20 A Me and Mike got back together. We had
21 to go seize the account -- took two weeks for us
22 to seize the account. In that time, money was
23 being spent out of that account by Jason. Money
24 was being moved around by Jason. Over 75,000 was
25 put into an escrow account into his attorney's

34
1 spending money and they wanted to suspend me for
2 30 days, which was overturned by the AriZona
3 Court, because I didn't do anything. And that's
4 when we came back in and took the company back
5 from Jason. Jason was trying to change my bylaws
6 and change notes and tried to take the company
7 private behind my back and Joe's back, without our
8 knowledge.

9 Anything that we had to do as a
10 company, Patrick, me, Joe, and Jason had to agree.
11 That's it, real simple. Let's take the Dollar
12 General deal. I said no to that in February of
13 2022. They wanted to do a Dollar General deal,
14 Mike and -- Costello and Tzanetatos, and I said,
15 no with the shots; too much money, too much risk.
16 You have to pay slotting fees. There's over a
17 million dollars in slotting fees you have to have.
18 We're not a Dollar General brand. Well, that deal
19 kept going on behind my back without my knowledge
20 and Joe's knowledge, with Jason.

21 Q So you said Mr. Tucker wanted to
22 suspend you for 30 days. Did he suspend you for
23 30 days?

24 A It was forced. Yeah. I was back into
25 a corner and it's better for the shareholders. I

35

1 name, which is illegal, that we got back.

2 So the account was drained, so we
3 didn't pull anything. We were just trying to get
4 the company back and figuring out what we were
5 going to do, you know? He had -- he had spent the
6 money that -- on making all these shots, which
7 none of us agreed to. I mean, there was \$800,000
8 in shots that they spent money on with shippers
9 and stuff that was sitting there going to Dollar
10 General, that the deal was dead. So this is why
11 we said no to it in February, because we knew that
12 it was a bad idea, to not do this, and they moved
13 forward with it.

14 So the money that came into the company
15 from when he took over the account, I don't know
16 anything about. I've never seen it, and my name
17 was never -- I never seen a statement. I never
18 was attached to it. For six months, I was --
19 Jennifer was trying to get me to get on the
20 account with Jason. He always had an excuse, so --

21 And we had a deal with the PFL at that
22 time, so I was doing the events with the PFL and
23 furthering our brand with the PFL and athletes and
24 stuff like that, so -- while at that time, he was
25 just plotting his moves.

Transcript of Toby McBride
Conducted on November 15, 2024

10 (37 to 40)

1 Q So after you stopped getting paid in
2 September or August of 2022, you never received
3 any other compensation from Takeover?
4 A No. No. I had my shares.
5 Q You mentioned -- I'm sorry. What?
6 A I had my shares in the company, but
7 I've never moved a share during a day in my life,
8 so -- they weren't worth anything.
9 Q You still have your shares?
10 A No.
11 Q When did you -- well, how did you --
12 when did you stop having them?
13 A February of '23.
14 Q What did you do with them?
15 A Sold them back to the company and then
16 that was it.
17 Q How many shares did you have?
18 A Just under half a billion -- half a
19 billion shares. I had originally two point
20 billion -- 2 -- 2 billion shares, but 1.5 billion
21 went to lies that Jason perpetuated that said they
22 were going to go somewhere else that they didn't
23 go to.
24 They were supposed to go to pay off
25 Manny Pacquiao debt, and that's not what happened.

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1 Pacquiao. They went to Jason Tucker. They went
2 to Melissa Tucker. They went to Deppoleto. They
3 went to -- to Anthony Pettis. They went to Josh.
4 My shares did not go to Manny Pacquiao. So my
5 shares were used for other things, not to go to
6 Manny Pacquiao.
7 Q But Takeover wasn't a publicly traded
8 company, correct?
9 A Well, it was part of LTNC, so however
10 that works.
11 Q How much did you receive for the 500
12 million shares when you sold them back in February
13 2023?
14 A Just under -- probably just under 30
15 grand.
16 Q You mentioned it a couple times, but
17 Labor Smart -- what is Labor Smart?
18 A I believe that was part of Schadel's
19 company. I can't be -- I'm not too sure, Patrick.
20 Sorry.
21 Q It sounds like you weren't really
22 responsible for --
23 A No.
24 Q -- figuring out or executing which --
25 between Labor Smart, LTNC, and Takeover in the

39

1 That's the only reason why I gave up my 1.5
2 million shares -- billion shares.
3 Q When did you give up the 1.5 billion?
4 A Jason had contacted me February or
5 March of 2022 and said that, you know, hey, we got
6 to pay Manny and, you know, let's use your shares
7 to give to him. We'll give him -- we'll give them
8 back to you.
9 Of course. You know, it's for the
10 shareholders. It's for the company. If their --
11 shares weren't worth anything right then, so it's
12 like, yeah. If it's going to help subside and
13 make him happy, no problem. Did it in the drop of
14 a hat; would've done it for anybody that would've
15 had a note or would've been a part of the company.
16 If I'm going to get them back down later, no
17 problem. If it's going to help us leverage, no
18 problem.
19 Q Now, as I understood it, these were
20 shares -- you're talking about shares. They
21 weren't actually shares in Takeover. They were
22 shares in Labor Smart; is that correct?
23 A Yeah. I'm not too sure how all that --
24 you know, that whole thing worked. I mean, but
25 eventually, my shares did not go to Manny

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1 interlap -- or overlap between them. It sounds
2 like that wasn't really your responsibility; is
3 that fair?
4 A Yes, sir.
5 Q Whose responsibility was it from the
6 Takeover side?
7 A I wouldn't -- I wouldn't say
8 responsibility, but --
9 MR. BENNION: I'm going to state an
10 objection.
11 Toby -- Toby --
12 I'm going to state an objection to the
13 extent it may call for a legal conclusion or
14 speculation.
15 Go ahead.
16 BY MR. HARVEY:
17 Q You can go ahead and answer.
18 A Can you -- want to say it again,
19 Patrick? Sorry.
20 Q Sure. I had asked you a moment ago if
21 you were the one who was responsible for the
22 interaction between Labor Smart, LTNC, Takeover,
23 shares, things of that nature, and you said, no,
24 that wasn't you.
25 And then my question was, who from

40

Transcript of Toby McBride
Conducted on November 15, 2024

11 (41 to 44)

1 Takeover was responsible for those types of things?
2 A And like I said, I don't know if it's
3 responsible, but Mike was -- Mike was more on top
4 of it. And Jason -- well, Jason -- at that time,
5 Mike was out of the picture, so Jason ran all of
6 it at that time.
7 Q When to when was Mike out of Takeover?
8 A November of 2021 -- no, '22, yeah. No,
9 wait -- yeah, '21 -- November of '21, when he was
10 sick.
11 Q That's when he first left Takeover?
12 A Well, Jason pushed him out.
13 Q And then when did Mr. Holley come back
14 to Takeover?
15 A '22, October -- at the end of October,
16 beginning of November is when we figured
17 everything out.
18 Q Have you ever held any positions with
19 Labor Smart?
20 A Not that I'm aware of, no.
21 Q And as you sit here today, do you know
22 whether Labor Smart is the majority shareholder of
23 Takeover Industries, Inc.?
24 A I couldn't tell you. I'm out of it.
25 Q Do you know if it ever was?

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1 A I'm not too sure. I don't recall.
2 Q What is Next Gen Beverages, LLC?
3 A I believe that's their -- that --
4 that's their company.
5 Q Who's they?
6 A I believe that's Tom and Mike's
7 company. I have nothing to do with that.
8 Q Tom Zarro?
9 A Yeah.
10 Q Z-A-R-R-O?
11 A I believe so.
12 Q And Mike Holley?
13 A Mm-hmm.
14 COURT REPORTER: I'm sorry --
15 BY MR. HARVEY:
16 Q Yes?
17 A Yes.
18 Q Thanks. So I think you just said it,
19 but I want to make sure. Have you ever had any
20 involvement with Next Gen Beverages?
21 A No. No.
22 Q Have you ever received any compensation
23 from Next Gen Beverages?
24 A No, sir.
25 Q Did they ask you to be part of it?

1 A No, sir.
2 Q Did you ever ask to be part of it?
3 A No, sir.
4 Q Do you know how Next Gen Beverages
5 obtained its startup capital?
6 A No, sir.
7 Q Do you know what type of products Next
8 Gen Beverages sells?
9 A All I've seen is the hydrogen water,
10 and briefly, flavors.
11 Q And when you said seen, did you mean
12 you saw them online?
13 A I -- I believe so. On -- well, on
14 social media. Just so you know, I try to stay out
15 of -- I'm too busy doing what I do, so I try to
16 stay out of what they're doing and --
17 COURT REPORTER: Could you say the name
18 one more time? You said Sillwell Media?
19 THE WITNESS: Oh, social. Sorry.
20 Like, Instagram -- yeah.
21 COURT REPORTER: Thank you.
22 THE WITNESS: Sorry.
23 Shareholders --
24 BY MR. HARVEY:
25 Q To your knowledge, is there any

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1 difference -- I'm sorry. What?
2 A Shareholders will post stuff on social
3 media, and I'll see it that way.
4 Q To your knowledge, is there any
5 difference between the hydrogen water that Next
6 Gen Beverages is selling and the hydrogen water
7 that Takeover was selling?
8 A No, no idea. I couldn't tell you.
9 Like I said, I'm not involved. I haven't tried
10 it. I haven't -- I've just seen pictures. Every
11 brand is different. Every -- SoBe, Snapple, it's
12 all different. You could say it's the same thing,
13 but it's different, so --
14 Q Do you know whether Takeover
15 transferred any assets to Next Gen Beverages?
16 A No.
17 Q Do you know whether Takeover
18 transferred any trades to Next Gen Beverages?
19 A No, sir.
20 Q Do you know whether Next Gen entered
21 into any agreements with Manny Pacquiao?
22 A No, sir.
23 Q Do you know whether Next Gen Beverages
24 sold NXT LVL products on the Next Gen and/or
25 LinkedIn -- or LOCK'DIN website?

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Transcript of Toby McBride
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12 (45 to 48)

1 A No, sir. Like I said, Patrick, I'm --
2 I have nothing to do with that to -- nor do I pay
3 attention to it unless I'm on social media and see
4 --
5 Q Have you ever promote -- oh, I'm sorry.
6 Go ahead.
7 A Unless I see it that way, that's the
8 only way I would know.
9 Q Have you ever promoted any Next Gen
10 Beverages or LOCK'DIN products on your personal
11 social media channels?
12 A No.
13 Q When did you first meet Mr. Holley?
14 A Oh, my God, way back.
15 Q Ballpark is fine.
16 A Way back when we did AriZona, 2010,
17 2011, 2012, right in between -- somewhere in
18 there. Sorry. That was a long time ago. It's
19 over 20 --
20 Q What were the --
21 A Over 20 years, Patrick.
22 Q What were the circumstances?
23 A He was working at AriZona and I got
24 brought in.
25 Q AriZona, the tea company?

45

1 after that. I could be off three or four years on
2 that. Sorry, Patrick -- been a while.
3 Q No problem. What were the
4 circumstances under which you met Mr. Pavlik?
5 A So we got brought into a company called
6 -- oh, my God. What was it called? It was in
7 Florida. It was a supplement brand. E -- god,
8 what was the name of the brand? Wasn't -- it
9 wasn't Evolve.
10 E2, that was it, so the -- the letter E
11 and then the number 2. So it was a -- it was a
12 drink that had, was it 8 ounces, that had a lot of
13 beta-alanine. So if you're working out, it would
14 wake up your -- it would -- beta-alanine makes you
15 tingle. So what it's -- when it's tingling, it's
16 waking up your blood vessels that have died.
17 So they made a brand called E2 that had
18 a lot of beta-alanine in it. At that time was a
19 lot because it would make you feel like you're on
20 fire, make you feel like you were going into a
21 different place, so -- and we came in to show E2
22 and tried to get a distribution. That's how we
23 met Joe.
24 Q When did you first meet Tom Zarro?
25 A When he originally did his note, I was

47

1 A Yes, sir.
2 Q And was that your consulting firm?
3 A No. It was -- I got brought into
4 AriZona, so I got brought into AriZona iced tea as
5 an -- as an employee.
6 Q Okay. And did you two work together
7 then?
8 A Yeah. Yeah.
9 Q What was he doing at AriZona at that
10 time?
11 A Sales here in Northern California.
12 Q And were you doing marketing?
13 A No. I was doing sales, too, to come in
14 and -- that's the year that the 99 cent can came
15 out. So I came in to increase their market share
16 on the West Coast.
17 Q When did you first meet Joseph Pavlik?
18 A Oh, God, a couple of -- probably a year
19 or two after that. So Mike was early 2006, 2007.
20 Mike -- because it has been over 20 years with
21 Mike. So Joe would've been around 2010, yeah.
22 No, not even 2010. Probably '05 or '06 with Mike
23 -- 2005, 2006 with Mike. And then Joe, probably
24 -- Mike -- yeah, 2009 with Mike, and then Joe,
25 probably a year after -- Joe, probably a year

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1 on the call, but --
2 Q When was that?
3 A Early '21, when we started.
4 Q And when you say his note, do you mean
5 he had a promissory note with Takeover?
6 A Yes, sir.
7 Q Did you know him at all before that
8 call?
9 A No, sir.
10 Q How did Takeover come into contact with
11 him, such that it was giving him a note?
12 A I believe through Ryan Schadel.
13 Q How much was his note worth?
14 A I don't recall.
15 Q And from that point, going forward
16 after that, Mr. Zarro took kind of a role within
17 Takeover, correct?
18 A No, sir. There was no role for Tom
19 Zarro.
20 Q Was he ever on the board?
21 A Not at -- no, not to my -- not to my
22 knowledge, no.
23 Q Okay. When did you first meet Ryan
24 Schadel?
25 A When we started the company, early

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Transcript of Toby McBride
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13 (49 to 52)

1 **January, February of '21.**
2 Q What were the circumstances under which
3 you met him?
4 **A Through Joe's contact -- through Joe's**
5 **contact. That's how we got to Ryan. Ryan is the**
6 **original one that had LTNC.**
7 Q Was Mr. Schadel ever an employee,
8 agent, officer, director of Takeover?
9 **A No, sir.**
10 Q Do you know whether he has any of those
11 positions with Next Gen?
12 **A Not to my -- I -- I couldn't tell you.**
13 **I'm not -- I'm not involved, especially with --**
14 Q And you said Mike Tzanetatos was a
15 Takeover employee, correct?
16 **A Yes, sir.**
17 Q And you said he was a former sales
18 representative; is that true?
19 **A Yes, sir.**
20 Q Do you know whether he's working for
21 Takeover today?
22 **A No, sir.**
23 Q Do you know whether he works for Next
24 Gen today?
25 **A He does not. He's -- he works for a --**

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1 **a -- a jam company -- a jelly company.**
2 Q Okay. I'm going to share my screen
3 with you and show you an exhibit.
4 Are you able to see that? Are you able
5 to see my screen, Mr. McBride?
6 **A Yeah, I can see it. Sorry about that.**
7 **Yes, sir.**
8 Q No problem.
9 MR. HARVEY: So we'll mark this as
10 Exhibit 1.
11 (EXHIBIT 1 MARKED)
12 BY MR. HARVEY:
13 Q And this is a December 9, 2022 e-mail
14 from you to Mr. Tzanetatos, Jennifer Reiter, Joe
15 Pavlik, and Mike Holley, correct?
16 **A Yes, sir.**
17 Q And you say, Mike, unfortunately, at
18 this time, your employment with Takeover
19 Industries is laying you off, correct?
20 **A Yes, sir.**
21 Q Do you recognize this e-mail?
22 **A Yes.**
23 Q And at the time, was
24 Toby@TakeoverInd.com your e-mail address?
25 **A Yes, sir.**

1 Q Did you make the decision to terminate
2 Mr. Tzanetatos?
3 **A No. It -- it -- it hurt us to even**
4 **have to let those guys go because we couldn't**
5 **afford to keep them anymore.**
6 Q But did you make the decision to
7 terminate him?
8 **A Well, we laid them off, so me, Mike,**
9 **and Joe and the attorneys.**
10 Q And why did you lay him off?
11 **A We couldn't -- we had no revenue to**
12 **keep them there, or we would've kept them. This**
13 **sucks to have to relive this. Sorry, Patrick.**
14 Q Did Takeover terminate any other
15 employees other than Mr. Tzanetatos around this
16 time frame?
17 **A Costello and Tzanetatos were at the**
18 **same time.**
19 Q Who took over for sales after Mr.
20 Tzanetatos and Mr. Costello were terminated?
21 **A Well, I mean, we were too busy with**
22 **figuring out what Jason did, so sales were off the**
23 **table at that point. We were trying to figure out**
24 **what was going on and what Jason had gotten the**
25 **company into, and unraveling that onion was pretty**

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1 **much our full-time job.**
2 Q How long did it take you to get that
3 done?
4 **A Took us almost --**
5 MR. BENNION: State an -- I'm going to
6 state an objection to the extent it may call for
7 speculation. Vague and ambiguous.
8 Go ahead.
9 THE WITNESS: It took us almost three
10 months to figure out what -- everything had
11 happened in that year that Jason was left alone to
12 conspire what he did. I mean, we seized his
13 emails --
14 BY MR. HARVEY:
15 Q After that three months, did Takeover
16 begin trying to sell again?
17 **A I had -- I had stepped away at that**
18 **point. I had had enough, so --**
19 Q Shortly thereafter?
20 **A Yes, sir.**
21 Q To your knowledge, did Mr. Tzanetatos
22 ever go back to work for Takeover after this
23 December 2022 termination?
24 **A I don't believe so.**
25 Q To your knowledge, did Mr. Costello

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Transcript of Toby McBride
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14 (53 to 56)

	53	
1	ever go back to Takeover?	
2	A I don't believe so. They all found	
3	jobs right after, thank God.	
4	Q Do you know whether either of them went	
5	to go work for Next Gen?	
6	A No, sir.	
7	Q Who is Maurice Salem?	
8	A I couldn't tell you who that was if my	
9	life depended on it.	
10	Q Okay. And you mentioned an individual	
11	named Kerby Fortner before, correct?	
12	A Yes, sir.	
13	Q And that's Kerby, K-E-R-B-Y, correct?	
14	A I believe so.	
15	Q And what was his role, did you say,	
16	with Takeover?	
17	A Social media, the gamer -- the gamer	
18	stuff, kind of watching over that.	
19	Q Was he still working at Takeover by the	
20	time you left in January 2023?	
21	A No.	
22	Q When did he leave Takeover?	
23	A He was there before I was -- before I	
24	was suspended and then I don't know what happened	
25	after that.	
	54	
1	Q He was gone by the time you came back?	
2	A He wasn't on the radar at that point.	
3	So he was just being paid here and there for what	
4	he did, so that was him and Jason. I had nothing	
5	to do with it.	
6	Q Have you ever met James Deppoleto?	
7	A Yes, sir.	
8	Q How many times have you met him?	
9	A I met James in Dallas and I met him in	
10	Atlanta.	
11	Q When was the first time you met Mr.	
12	Deppoleto?	
13	A Oh, God, I -- I'm not sure, Patrick.	
14	Maybe June -- it was when the fight was in -- PFL	
15	was in Dallas. Him and his -- him and his dad	
16	came out.	
17	Q And PFL is Professional Fighting League?	
18	A Yes, sir.	
19	Q And why did you meet him at that time?	
20	What were the circumstances that led to you guys	
21	meeting?	
22	A Me and Anthony Pettis go way back.	
23	Anthony met me when we first came into the PFL in	
24	2021 and wanted to invest, him and Josh, and	
25	that's how I met James. James wanted to be a part	
	55	
1	of what Anthony was doing, so that's how that kind	
2	of -- that's the connection. I've known Anthony	
3	for a long time, 14 years.	
4	Q When did you first -- first meet	
5	Anthony Pettis?	
6	A Oh, God, Sacramento when I was running	
7	Xyience with the UFC, so him and Duke Roufus.	
8	Duke had him --	
9	Q Sacramento --	
10	A Sacramento had a fight with the UFC. I	
11	was running Xyience at that time, which was the	
12	energy drink on the met. And Duke Roufus brought	
13	Anthony out and Sergio. Sergio was, like 15, 14,	
14	whatever he was then. And they were -- they	
15	needed a gym to work out. So I got Urijah's Gym	
16	for them to work out for all the UFC guys to come	
17	out and work out at Urijah's Gym. That's how I	
18	met Duke Roufus and met Anthony, and then it just	
19	prolonged from there. That's when Anthony first	
20	came into the UFC -- or WEC, sorry, at that time.	
21	Q And so what was Mr. Pettis's	
22	relationship with Takeover?	
23	A See -- Pettis? Zero. Anthony had no	
24	-- he was just an investor.	
25	Q When did he first invest in Takeover?	
	56	
1	A I don't recall the date that him and	
2	Josh came in. I don't remember. It was after --	
3	it was after that fight in Florida, so probably	
4	early -- early February, March of '22.	
5	Q Who's the Josh you just referred to?	
6	A Rapkin.	
7	Q Can you spell that?	
8	A R-A-P-K-I-N.	
9	Q And who is Mr. Rapkin?	
10	A Buddy of Anthony's.	
11	Q And he also invested in Takeover?	
12	A Yes. Him and Anthony first came in,	
13	and then James came in, I believe, right after	
14	that.	
15	Q Have Mr. Pettis and Mr. Rapkin been	
16	repaid whatever their investment was?	
17	A I believe so. I believe they --	
18	Q Did they get --	
19	A I believe they --	
20	Q Did they get notes or did they buy	
21	shares?	
22	A I believe that they got shares, so they	
23	moved them when the company went -- when Mike got	
24	it trading back public, so I believe they did. I	
25	don't know. I don't talk to Anthony anymore, so --	

Transcript of Toby McBride
Conducted on November 15, 2024

15 (57 to 60)

1 Q I'm sorry. Did you say that they had
2 shares or did they have a note like Mr. Deppoleto
3 had?

4 A **I believe they had a note that had**
5 **shares. That's how we usually would've done it,**
6 **so -- but Jason put that all together, so --**

7 Q And when you met Mr. Deppoleto in
8 Dallas, I think you said -- well, I just want to
9 make -- I just want to make sure your
10 understanding is that he was interested in
11 investing in Takeover and that's why you were
12 meeting in Dallas; is that accurate?

13 A **He had mentioned he wanted to come in,**
14 **and so I told Jason just to have him come to**
15 **Dallas and we'll meet face-to-face. That's how we**
16 **usually -- I'd rather see somebody's eyes and see**
17 **if they're -- this is something they want to do**
18 **and make them feel comfortable with us, with me**
19 **and Joe. And he brought his father out, which is**
20 **a great -- was a great man.**

21 We had a good time and he talked to me
22 for about 20, 30 minutes. And then we had him at
23 dinner and took him to the fight and had a great
24 time. And it was real nonchalant, real easy, and
25 if he came in, he came in. If he didn't and he

1 didn't, and that's kind of how I left it. Wished
2 him the best of luck, said, hopefully, see you
3 again, and then Jason said he wanted to come in.
4 There was no force. There was no -- it was just
5 real nonchalant. It was a great time. He was a
6 nice guy. He's a really nice guy. So is his
7 father. A lot of respect for the dad. We had a
8 great time.

9 Q Do you recall a June 10, 2021 special
10 meeting of Takeover's board of directors?

11 A I don't recall that.

12 Q Do you remember attending a meeting
13 around that time -- a -- a board of directors
14 meeting around that time?

15 A I don't recall. I would have to look
16 at it and see what it was about.

17 Q Did you have any involvement in
18 soliciting celebrity endorsements for Takeover,
19 such as paying Manny Pacquiao?

20 A Manny Pacquiao, I -- I was involved
21 after we got him. T-Pain was told from day one
22 and there are people from me to Jason to get me on
23 the phone with him. Just so you're aware, anybody
24 I've ever dealt with, I have to talk to you on the
25 phone. I have to meet you. I have to -- that's

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1 just how I do things. You have to be right for
2 the company. Any brand I've ever been with, even
3 when we had our -- me and Mike had our own -- we
4 had Jonathan Quick, Haloti Ngata, and Aldon Smith
5 at one time. They were all like family.

6 So anybody we brought in, I wanted to
7 make sure was there for the right reason, and we
8 weren't having to babysit, especially somebody
9 like T-Pain that was getting bigger. And I had --
10 I'd never known the guy, didn't know his

11 intentions, so I was kept away from him. I was
12 isolated from T-Pain. For Manny, we did Manny's

13 fight and I met Manny then, and his people there.

14 Q Why were you kept away from T-Pain?

15 A I couldn't tell you. Jason separated
16 that issue. I think that was his starting point
17 of trying to manipulate what they were trying to
18 do; try to take the shot, separate it from the
19 company, and take it private. I think that's when
20 his plan pretty much started.

21 Q Have you reviewed --

22 A So I was kept away from T-Pain and his
23 people.

24 Q Have you -- have you reviewed the
25 contracts between Takeover and Manny Pacquiao and

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1 T-Pain?

2 A No.

3 Q Did you --

4 A I've seen them briefly. That's it.

5 Q Did you sign those contracts on behalf
6 of Takeover?

7 A I believe so.

8 Q Do you remember the length of the
9 Pacquiao contract?

10 A I think that one was, like, 30 pages
11 long, wasn't it? I don't recall.

12 Q Oh, I mean, not the -- not the number
13 of pages in the document.

14 A Oh.

15 Q How long was the deal supposed to last?

16 A I couldn't tell you, Patrick. Sorry.

17 It's been so -- it's been a while. I believe two
18 years.

19 Q And that was executed in April 2021,
20 correct?

21 A Yeah. There was a lot that he had to
22 do, also; distribution in the Philippines, a lot
23 of the stuff that was supposed to go down that
24 Jason was supposed to make sure happened that
25 never happened.

60

Transcript of Toby McBride
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16 (61 to 64)

1 Q Was the Pacquiao contract exclusive?
2 In other words, was Pacquiao agreeing to refrain
3 from promoting products that competed with NXT LVL?
4 A I would've made -- we would've made
5 sure that would've -- anybody would've made sure
6 that would happen. I would assume that would've
7 been in there. He was a fan of the brand, so he
8 was drinking it before. Once we made it, it was
9 sent to him. That's how we got -- that's how he
10 pretty much got through a shareholder, got to us,
11 and he wanted to be a part of it, so that's how he
12 came to us. Otherwise, probably wouldn't have
13 been a part of the company.

14 Q You spent Takeover's funds on personal
15 expenses, correct?

16 MR. BENNION: Just state an objection
17 that that calls for speculation. Lacks foundation.

18 Go ahead.

19 THE WITNESS: Whatever I spent, I -- I
20 paid back immediately.

21 BY MR. HARVEY:

22 Q So the answer is yes, you did spend
23 Takeover funds on personal expenses?

24 MR. BENNION: Same objection.

25 THE WITNESS: Yes.

61

63

1 MR. BENNION: Objection. Lacks
2 foundation. Calls for speculation.

3 THE WITNESS: No.

4 BY MR. HARVEY:

5 Q How much did you spend if it wasn't
6 over 250,000?

7 A I don't recall what -- that was also
8 thrown out in the AriZona case, but you already
9 know that.

10 Q Over 200,000?

11 A I don't recall.

12 Q Did Takeover reprimand you in any way?

13 A Well, I was suspended by Jason over
14 false accusations.

15 Q You were placed on a leave of absence?

16 A Whatever -- yeah.

17 Q And what was the time period?

18 A Three weeks. Supposed to be for 90
19 days, but Judge overturned it and then we exposed
20 Jason for what he was doing to our company and the
21 people he was doing it with.

22 Q Were you placed on a leave of absence,
23 in -- in other words, removed from your role as a
24 director of Takeover, or were you only removed as
25 your role as CEO of Takeover or was it both?

62

64

1 A I believe it was just as the role --
2 couldn't take me off the board.

3 Q Just as CEO?

4 A Yeah. You can't take me off the board.
5 Yeah.

6 MR. HARVEY: Let me show you my screen
7 again here.

8 We'll mark this as Exhibit 2.

9 (EXHIBIT 2 MARKED)

10 BY MR. HARVEY:

11 Q Are you able to see it?

12 A Yep.

13 Q And at the top of this document, it's
14 got a case number on it. And so it looks like
15 this was something that was filed in court on
16 September 2023.

17 Setting aside that portion, have you
18 seen this document before?

19 A I don't recall this.

20 Q It's -- at the top, it says, Related
21 Party Receivable Confirmation, correct?

22 A Right.

23 Q And it's dated March 25, 2022, correct?

24 A Correct.

25 Q And then it's -- a little bit further

Transcript of Toby McBride
Conducted on November 15, 2024

17 (65 to 68)

1 down, it says, The following information relating
2 to amount owed by me to Takeover Industries as of
3 December 31st, 2021, agrees to my records due from
4 related party as of December 31st, 20201,
5 \$243,253.84, correct?

6 **A Correct.**

7 Q And then you DocuSigned it on the
8 bottom, correct?

9 **A It looks like it.**

10 Q So as of March 25, 2022, you owed
11 Takeover \$243,000 and change, correct?

12 **A No. This is another made up document
13 by Jason. This is another made up money by Jason
14 Tucker. This was thrown out of court.**

15 Q Why did you sign it if it was made up?

16 **A This is all forcible stuff that Jason
17 put me through, put us through, put me and Joe
18 through, to release our shares, to threaten this,
19 threaten that, tell shareholders. That's why.**

20 Q I don't think I understand your answer.

21 Why would you have signed this document if you
22 weren't agreeing that you owed \$243,000 as of
23 March 25, 2022?

24 **A Because he was threatening to do
25 certain things that were scaring the shit out of**

1 **me and Joe, so we didn't know better back then
2 what we know now.**

3 Q So you signed a document saying you
4 owed the company \$243,000, but you didn't actually
5 mean it?

6 **A This was thrown out of court. So I
7 don't know why I'm even answering this question.
8 This is -- this is -- this is lies. So I don't --
9 I don't owe the company \$243,000.**

10 Q So your testimony is that you signed
11 this saying you owed the company 243,000, but you
12 didn't actually believe you owed the company
13 243,000. Is that what you're telling me?

14 **A I'm telling you I don't owe the company
15 anything, that this was made up by Jason Tucker,
16 period, end of story. That's it.**

17 Q It sounds like you're talking about you
18 don't owe the company anything today. I'm asking
19 you as of March 25 --

20 **A No.**

21 Q -- 2022, did you owe the company
22 \$243,000?

23 **A No, I did not.**

24 Q So why did you sign this, then?

25 **A Because at -- then Jason had us**

65

1 **convinced that I did.**

2 Q And how did he go about convincing you?

3 **A With his threats.**

4 Q I'm not following that.

5 THE WITNESS: Don, I need a -- I need a
6 few minutes. I need a break.

7 MR. BENNION: I -- I -- Counsel, I do
8 think this is time for a break. You -- you -- you
9 -- your last statement was, I'm not following
10 that, so I don't think that's a question. If you
11 want to -- I do have to use the bathroom as well.
12 Is this a good time for a break?

13 MR. HARVEY: Sure. We can take five
14 minutes.

15 MR. BENNION: And by the way, could you
16 put the top of this document -- I can't see the
17 title of the document up top -- the related party
18 -- okay. Thank you. Can we take 10 minutes,
19 Patrick?

20 MR. HARVEY: Sure. Yeah.

21 THE WITNESS: I need 10 minutes. I got
22 to get my -- my (inaudible) and stuff situated
23 here.

24 THE VIDEOGRAPHER: All right. We are
25 going off the record. The time is 9:35 a.m.

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1 (OFF THE RECORD)

2 THE VIDEOGRAPHER: We are going back on
3 the record. The time is 9:54 a.m.

4 MR. HARVEY: During the break, Mr.
5 McBride told his counsel that he is not feeling
6 well, such that we need to end the deposition
7 right now. What -- I've agreed to do that,
8 obviously, holding it open. We've agreed to
9 continue the deposition next Friday, November 22,
10 starting at 8:00 a.m. Pacific, 10:00 a.m.

11 Central. We'll do that via Zoom as well.

12 Is that accurate, Counsel?

13 MR. BENNION: Yes, it is. Thank you,
14 Counsel.

15 MR. HARVEY: No problem. Okay. So I
16 think we're all set then.

17 MR. BENNION: Patrick, do you have a
18 second? Maybe you and I could talk. Maybe we --
19 maybe we can do it via phone. We don't have to be
20 --

21 MR. HARVEY: Yeah. Sure. I'm at my
22 office, if you want to give me a call. We can go
23 off the record now.

24 MR. BENNION: So Toby, take care and I
25 -- I -- I -- I'll call you later today. Get some

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Transcript of Toby McBride
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18 (69 to 72)

1 rest.

2 THE VIDEOGRAPHER: All right. This
3 marks the end of part 1 of the deposition of Toby
4 McBride. The time on the monitor is 9:55 a.m.
5 (Off the record at 9:55 AM.)

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13 *Carly Hurst*

14

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16 CARLY HURST

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22 FOR THE STATE OF CALIFORNIA
23 NOVEMBER 27, 2024

24

25

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Transcript of Toby McBride, Volume II

1 (72 to 75)

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	72		74
1	UNITED STATES DISTRICT COURT	1	A P P E A R A N C E S
2	FOR THE DISTRICT OF NEVADA	2	
3	-----x	3	ON BEHALF OF THE PLAINTIFF:
4	JAMES DEPOLETO, :	4	PATRICK HARVEY, ESQUIRE
5	Plaintiff, :	5	HUSCH BLACKWELL, LLP
6	vs. : Case No.	6	511 N. Broadway
7	TAKEOVER INDUSTRIES INCORPORATED, : 2:22CV02013	7	Suite 1100
8	et al., :	8	Milwaukee, Wisconsin 53202
9	Defendants. :	9	Phone: 414.273.2100
10	-----x	10	(Present via videoconference)
11		11	
12		12	ON BEHALF OF THE DEFENDANTS:
13		13	DON BENNION, ESQUIRE
14	Videotaped Deposition of TOBY MCBRIDE	14	LAW OFFICE OF DON BENNION
15	Volume II	15	6980 O Bannon Drive
16	Conducted Virtually	16	Suite 400
17	November, Friday 22, 2024	17	Las Vegas, Nevada 89117
18	8:08 a.m. PST	18	Phone: 702.333.0777
19		19	(Present via videoconference)
20		20	
21		21	
22		22	
23	Job No.: 559923	23	
24	Pages: 72 - 210	24	ALSO PRESENT:
25	Recorded By: Charlie McGrath, AAERT CER	25	Jesse Castro - PD Videographer
	73		75
1	Deposition of TOBY MCBRIDE, held virtually.	1	C O N T E N T S
2		2	EXAMINATION OF TOBY MCBRIDE PAGE
3		3	By Mr. Harvey 77
4		4	
5		5	
6		6	E X H I B I T S
7		7	(Attached to transcript.)
8		8	DEPOSITION EXHIBIT PAGE
9	Pursuant to Notice, before Charlie McGrath,	9	Exhibit 3 Excerpts from Bank Statements 84
10	AAERT CER, Notary Public, in and for the State of	10	Exhibit 4 Email Re Payments 146
11	California.	11	Exhibit 5 Resolution of Board of Directors 156
12		12	Exhibit 6 Written Consent Board of Directors 168
13		13	Exhibit 7 First Notice of Default 187
14		14	Exhibit 8 Second Notice of Default 190
15		15	Exhibit 9 Verified Complaint 194
16		16	Exhibit 10 Balance Sheet 2022 201
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1	P R O C E E D I N G S		
2	THE VIDEOGRAPHER: Here begins the		
3	continued deposition of to Toby McBride in the		
4	matter of Deppoleto v. Takeover Industries		
5	Incorporated, et al., in the United States		
6	District Court for the District of Nevada, Case		
7	number 2:22CV02013. Today's date is November		
8	22nd, 2024. The time on the video monitor is 8:08		
9	a.m. The remote videographer today is Jesse		
10	Castro representing Planet Depos. All parties of		
11	this video deposition are attending remotely.		
12	Would Counsel pleads voice		
13	identify themselves and state whom they represent?		
14	MR. HARVEY: Patrick Harvey for the		
15	plaintiff.		
16	MR. BENNION: Don Bennion for Toby		
17	McBride and the other Defendants.		
18	THE VIDEOGRAPHER: And the court		
19	reporter today is Charlie McGrath also		
20	representing Planet Depos. The witness may now be		
21	sworn.		
22	THE REPORTER: All right. One moment,		
23	folks.		
24	I am a notary authorized to		
25	administer oaths and this deposition will be		
	77		79
1	recorded by electronic means. All parties		
2	understand and agree that any certified transcript		
3	produced from the recording of this -- of this		
4	proceeding is intended for all uses permitted		
5	under applicable procedural and evidentiary rules		
6	and laws and shall constitute written stipulation.		
7	The parties stipulate to the use and certification		
8	of this testimony consistent with applicable law		
9	of such. Hearing no objection, I will now swear		
10	the witness.		
11	Whereupon,		
12	TOBY MCBRIDE,		
13	being first duly sworn or affirmed to testify to		
14	the truth, the whole truth, and nothing but the		
15	truth, was examined and testified as follows:		
16	EXAMINATION BY COUNSEL FOR THE PLAINTIFF		
17	BY MR. HARVEY:		
18	Q Good morning, Mr. McBride. Are you		
19	able to hear me?		
20	A Yeah, I can hear you.		
21	Q Okay. When we left off at your		
22	deposition last Friday, we were looking at Exhibit		
23	Number 2, and I was asking you some questions		
24	about it. I'm going to pull that up again. Are		
25	you able to see my screen?		

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	80		82
1 A No.		1 that goal if you stick to the questions I'm asking	
2 Q Are you aware that Michael Holley made		2 you.	
3 unauthorized distributions from Takeover, meaning		3 My question was, are you aware of	
4 distributions without approval from Takeover's		4 anyone alleging that Mr. Holley authorized	
5 board of directors?		5 unauthorized distributions of over -- or around	
6 MR. BENNION: Objection to the form of		6 \$750,000 of Takeover's money?	
7 the question. Lacks foundation. Calls for		7 MR. BENNION: Same objection. Go ahead.	
8 speculation. Go ahead.		8 THE WITNESS: I was aware and it was	
9 THE WITNESS: No, untrue.		9 lies.	
10 BY MR. HARVEY:		10 BY MR. HARVEY:	
11 Q You disagree that -- let me back up.		11 Q Okay. Who was raising those	
12 Strike that.		12 allegations?	
13 Are you saying that Michael Holley		13 A Again, Jason Tucker.	
14 did not make unauthorized distributions from		14 Q Anyone else?	
15 Takeover?		15 A Not that I'm aware of.	
16 A No. He never made unauthorized to my		16 Q And you say that those allegations were	
17 knowledge.		17 lies, correct?	
18 Q So I think we -- we're talking past		18 A Yes, they were.	
19 each other a little bit. Are you saying that Mr.		19 Q What's your basis for saying that?	
20 Holley never made unauthorized distributions from		20 A It was proven through three audits and	
21 Takeover?		21 two account -- two accounting firms.	
22 A Not to my knowledge.		22 Q Was one of the accounting firms BF	
23 Q And are you saying you don't have		23 Borgers, CPA, PC?	
24 personal knowledge of that, meaning you didn't see		24 A He was our personal accountant. We	
25 him do something like that, or you didn't hear		25 brought in two more after that.	
	81		83
1 directly him something like that? Is that what		1 Q And that's the same firm that's listed	
2 you're saying when you say, not to my knowledge?		2 on Exhibit 2 that you signed, correct?	
3 A I'm saying that not to my knowledge,		3 A I'm not -- I don't recall. It was two	
4 that Mike did anything wrong in this company.		4 years ago.	
5 Q Are you aware of allegations that Mr.		5 Q I'll pull it up again for you. Showing	
6 Holley authorized unauthorized distributions of		6 you again Exhibit Number 2, the box I've got	
7 around \$750,000?		7 highlighted that says BF Borgers, CPA, PC, correct?	
8 A The -- the -- the -- no.		8 A Correct.	
9 Q You've never heard anyone allege that?		9 Q Okay. What were the other accounting	
10 A They're false statements.		10 firms that you're claiming proved that the	
11 Q So you have heard people allege that?		11 \$750,000 were in fact authorized distributions?	
12 You just disagree with the allegations?		12 A I couldn't tell you. You'd have to	
13 A People, who?		13 look at the Arizona case.	
14 Q I'm asking you.		14 Q So you're relying solely on the Arizona	
15 A Jason Tucker -- Jason Tucker. First of		15 case?	
16 all, anything Jason Tucker touched from when he		16 A I'm relying on what the company did. I	
17 came in until he was fired, let go, and voted off		17 don't know who the accounting firms were. I'm not	
18 the board of directors for stealing, changing my		18 in contact with these people anymore. I don't	
19 bylaws, and everything that he did also with your		19 talk to them anymore.	
20 client is null and void. That's why we're here is		20 Q And you, as you are sitting here today,	
21 to renegotiate his note, which we tried to do as		21 you don't remember who these other accounting	
22 soon as we took the company back over.		22 firms were other than BF Borgers, CPA?	
23 Q Mr. McBride, like I mentioned a moment		23 A Nope. BF Borgers, CPA, was in line	
24 ago, I'm trying to get you out of here as quickly		24 with -- with Chase and Tucker trying to do what he	
25 as possible today, and we'll be able to accomplish		25 was trying to do. And that was also proven. So	

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	84		86
1 that's why we brought in two other accountants		1 of these charges that we see here. Okay. So the	
2 that had nothing to do with this company to go		2 first one I want to ask you about are, there's two	
3 through everything. And we opened up our books to		3 charges on 12-13-2021, each for \$1,000, and it is	
4 do that.		4 charged to All Pro Smog Tire and WH, Stockton,	
5 Q I'm going to show you another exhibit		5 California. Do you see those?	
6 here.		6 A Yep.	
7 A So Borgers did everything at the		7 Q What was the purpose of those charges?	
8 direction of Jason Tucker.		8 A Couldn't tell you, but my truck is	
9 Q Did Jason Tucker pay Borgers directly		9 tagged with Takeover and with Next Level on it.	
10 or did Takeover pay Borgers?		10 So my vehicle was rolling marketing for the	
11 A Again, my name was never on account.		11 company.	
12 Mike's was. Mike's was taken off by Jason Tucker.		12 Q You still have that vehicle?	
13 Jason Tucker's was put on. So Jason Tucker --		13 A Yes, I do.	
14 Q Borgers represented Takeover, not		14 Q And it still says Takeover?	
15 Tucker individually, correct?		15 A Yes, it does.	
16 A Exactly. But --		16 Q Okay. So are you claiming that these	
17 MR. HARVEY: Okay. So I'm showing you		17 \$2,000 charges were for something related to a	
18 another exhibit. This will be Exhibit Number 3.		18 Takeover advertising vehicle?	
19 (EXHIBIT 3 MARKED FOR IDENTIFICATION)		19 A To my car being --	
20 BY MR. HARVEY:		20 Q I'm sorry, what?	
21 Q Are you able to see my screen?		21 A Yeah, exactly.	
22 A Yep.		22 Q Do you know what you actually purchased?	
23 Q And at the top it says Bank of America.		23 A Couldn't tell you.	
24 And then it says Takeover Industries. And the		24 Q Okay. And if we go down on 12-16,	
25 dates are December 8th, 2021 through January 7th,		25 there's a charge for Lodi Beer Company.	
	85		87
1 2022, correct?		1 A Lodi.	
2 A Correct.		2 Q Lodi. What is that for?	
3 Q And then this is a 53-page exhibit as		3 A I couldn't tell you. I probably took a	
4 you can see. I don't want to go through every		4 distributor out for lunch.	
5 single one, but I did want to go through some of		5 Q But you don't remember as you sit here	
6 these line items that we see here.		6 today?	
7 MR. BENNION: Counsel, could you give		7 A No.	
8 me the -- the first Bates number on this exhibit		8 Q Who authorized you to make the \$1,000	
9 please?		9 purchases at All Pro Smog Tire and Wheel?	
10 MR. HARVEY: Yep. It's DEF-00012.		10 A Me, Mike, Jason, Joe.	
11 MR. BENNION: Thank you.		11 Q You had a specific discussion about	
12 BY MR. HARVEY:		12 these \$1,000 purchases?	
13 Q And Mr. McBride, I think we talked		13 A No. When my -- when my vehicle -- when	
14 about this last time, but just in case. There's		14 -- when my vehicle is -- is driving 6,700 miles	
15 Bates numbers in the bottom of these documents.		15 every couple months to meet with distributors or	
16 I'm not going to say the zeros. I'm just going to		16 retailers, and it's my vehicle doing it and I'm	
17 say DEF-12 or whatever, going forward to speed		17 going to do it, it's covered by the company.	
18 things along. Okay? Are you with me?		18 Q Okay. You're just using the vague term	
19 A Yeah.		19 company. I'm asking who specifically authorized	
20 Q Okay. So here we've got a section		20 these charges?	
21 labeled Toby McBride. And this is on Page 2 of		21 A Me, Mike, Jason, and Joe --	
22 the 53-page PDF. It's DEF-14. Do you see that		22 Q When --	
23 section?		23 A -- all knew about it.	
24 A I see it.		24 Q Is -- is there a formal --	
25 Q Okay. So I want to ask you about some		25 A No.	

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	88		90
1 Q	-- or any sort of written document that	1 lunch?	
2 authorized these charges?		2 A Again, I'm the CEO of this company when	
3 A No. No.		3 I was there. And everybody knew, Jason and Mike,	
4 Q Okay. So you're telling me there was a		4 what I was doing. So for me to go take some of	
5 specific discussion about these charges.		5 the lunch, I don't need authorization to go do	
6 A No, there wasn't no specific discussion.		6 that.	
7 Q Okay. Well, so how did the other		7 Q Is there a document that says that?	
8 people authorize it?		8 A No.	
9 A When I went and did it, I would call		9 Q And you said you were the CEO at this	
10 Mike or Chase and say, hey, I got to grab the car		10 time?	
11 servicer, or whatever I needed to do if it was		11 A Exactly.	
12 that expensive. And it was fine, there was never		12 Q How did lunch with a Budweiser	
13 -- never no -- you make it sound like somebody was		13 distributor benefit Takeover?	
14 trying to steal money and do something. That --		14 A It gets them distribution.	
15 that doesn't happen here. Never happened here.		15 Q Explain that a little more, if you	
16 Q Okay. So who specifically did you talk		16 would.	
17 to about the purchases at		17 A I meet with distributors to show them	
18 A I--		18 the product, to get it into retail, to get	
19 Q -- all Pro Smog Tire & Wheel?		19 distribution. Relationship building.	
20 A I don't recall.		20 Q And the other two individuals, you have	
21 THE REPORTER: I'm sorry, try and wait		21 no idea who they were?	
22 for the end of the question before answering.		22 A Nope.	
23 Thank you.		23 Q So how did buying launch for them	
24 BY MR. HARVEY:		24 benefit Takeover?	
25 Q So as you sit here today, you can't		25 A When we were ready to launch, they	
	89		91
1 name anyone who authorized those specific charges		1 would have been behind us.	
2 at All Pro Smog Tire & Wheel, correct?		2 Q Hadn't you already launched by this	
3 A Either Mike or Jason, one of the two.		3 point, December 2021?	
4 Q You can't specifically name --		4 A We were launching online.	
5 A No.		5 Q I'm not following there.	
6 Q Okay. Next one I wanted to ask you		6 A We were launching online. Only online	
7 about is December '21, Pier Market in San		7 sales.	
8 Francisco, \$404.32; what was that charge for?		8 Q Before December 2021?	
9 A Business -- business lunch with a		9 A Exactly.	
10 Budweiser distributor.		10 Q And so what -- I'm not following the --	
11 Q Who was the distributor?		11 what's the distinction that you're drawing there?	
12 A Possibly Matagrano at that time.		12 A The distinction is, in 2022, we would	
13 Q I'm sorry, could you spell that?		13 go to retail and distribution. That's the	
14 A M-A-T-A-G-R-A-N-O.		14 distinction.	
15 Q So you spent \$434 on a lunch with one		15 Q By the way, I was giving you the wrong	
16 other person?		16 dates. I just noticed, up here, it says Posting	
17 A There was four of us there.		17 date, and the column -- the actual transaction	
18 Q Who were the other people?		18 date is the second column. So I apologize. The	
19 A I don't recall, but there was four of		19 first one that I was asking you about was the All	
20 us there.		20 Pro Smog & Tire. The actual transaction date was	
21 Q And you four spent \$434 on lunch?		21 December 10, and then the Lodi Beer Company was	
22 A That's what it says, yes.		22 December 14. So I just wanted to clarify that for	
23 Q What did you have?		23 the record. And then the Pier Market lunch was	
24 A Couldn't tell you.		24 December 19. Did you submit receipts for the All	
25 Q Who authorized you to spend \$434 on		25 Pro Smog charges?	

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	92		94
1 A Receipts were sent all the time.		1 Q Did you submit a receipt?	
2 Q Who -- well, I'm talking specifically		2 A The receipt is what you see.	
3 about these 12-10 charges for All Pro Smog. Did		3 Q And you're telling me this was a	
4 you send receipts to Takeover for those?		4 business expense?	
5 A Yes, I would -- yes.		5 A Anything I put on that card is a	
6 Q Who did you send those to?		6 business expense.	
7 A I would have sent them to Mike at that		7 Q You said the receipt is what I see.	
8 time.		8 I'm looking at a bank statement. That isn't --	
9 Q Was anyone else involved in the All Pro		9 that's not a receipt.	
10 Smog & Tire purchases?		10 A I also kept the receipts.	
11 A No.		11 Q Does Takeover still have those?	
12 Q The next one I want to ask you about		12 A I couldn't tell you	
13 is, on 12-20, there's a charge for \$300 for Great		13 Q Who would have controlled those?	
14 Wolf Lodge. What's that for?		14 A Possibly Mike.	
15 A I'm not too sure.		15 Q Anyone else? You said possibly.	
16 Q Apparently, the arrival was on the		16 A Nope.	
17 19th, and the departure was the 20th. And it was		17 Q Next one is on January 13, 2020, \$1,000	
18 in Antica, California.		18 to Enterprise Rent-A-Car in Stockton, California.	
19 A Business expense of some kind.		19 What's that for?	
20 Q I'm sorry, what?		20 A I couldn't tell you.	
21 A Business expense of some kind. It was		21 Q So you also couldn't tell me how that	
22 three years ago, I don't know.		22 benefited Takeover?	
23 Q Did you submit a receipt for that?		23 A Probably driving down to L.A. for -- to	
24 A I'm not sure.		24 go meet with people. Instead of taking my truck,	
25 Q How would staying at a Great Wolf Lodge		25 I would rather rent something that had less gas in	
	93		95
1 -- which, I believe, is a water park, how would		1 A it.	
2 that be a business expense?		2 Q At the company's expense?	
3 A What difference is it -- it's a hotel.		3 A Exactly.	
4 Whether it's a water park or not, it's a hotel.		4 Q Even though the company was also	
5 Q So as you sit here today, you have no		5 paying, for example, \$2,000 for your truck to	
6 justification for this expense, correct?		6 advertise Takeover, correct?	
7 A Exactly.		7 A And? Yes.	
8 Q Okay.		8 Q Okay. And you're positive this was	
9 MR. BENNION: I'm going to state a		9 business as opposed --	
10 belated objection to that question. May call for		10 A Exactly.	
11 a legal conclusion.		11 Q -- to personal?	
12 BY MR. HARVEY:		12 A No.	
13 Q The next one I wanted to ask you about		13 Q How are you positive about that?	
14 is on DEF-32. So here, we've got another Toby		14 A It's business.	
15 McBride section. And the first entry is January		15 Q Correct. But just calling it business	
16 -- the one that I wanted to ask you about is		16 doesn't tell me that. How are you positive that	
17 January 10, 2022, Lodi Beer Company, for \$111.		17 it was business as opposed to personal?	
18 What was that for?		18 A Because it wouldn't have been personal.	
19 A Either meeting with a distributor or		19 Q And what makes you say that?	
20 retailer.		20 A I'm saying it. We can do this all day	
21 Q Who was it?		21 long.	
22 A Couldn't tell you, that was three years		22 Q So you don't remember anything about	
23 ago.		23 this \$1,000 purchase to Enterprise Rent-A-Car,	
24 Q Who authorized it?		24 true?	
25 A Nobody.		25 A I wouldn't have put anything on there	

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	96		98
1 that wasn't business-related at that time. So		1 was that expense for?	
2 it's business-related.		2 A Don't know.	
3 Q You -- my question was -- and again,		3 Q You don't remember a single detail	
4 we'll get through this quicker if you stick with		4 about this purchase?	
5 my questions as opposed to the ones you'd like to		5 A Nope.	
6 answer.		6 Q How would a purchase from Dick's	
7 A Be very careful. Don't -- don't --		7 Sporting Goods benefit Takeover?	
8 don't -- don't --		8 A I don't recall.	
9 MR. BENNION: Let -- let -- let --		9 Q How do you know this wasn't a personal	
10 let's just wait until there's a question, if -- if		10 expense?	
11 -- it makes it easier for the transcriptionist.		11 A It's -- I don't recall. It's not a	
12 BY MR. HARVEY:		12 personal expense.	
13 Q Do you remember a single detail about		13 Q What product from Dick's Sporting Goods	
14 this Enterprise Rent-A-Car \$1,000 payment?		14 could possibly benefit Takeover?	
15 A No.		15 A I do not recall.	
16 Q And if that's the case, how can you be		16 Q Next one we've got is also January 21.	
17 positive that it was a business expense?		17 Zoom Car Wash, \$262, on January 21, '22; do you	
18 A Again, at that time, I wouldn't have		18 see that?	
19 put anything on it that wasn't a business expense.		19 A Yep.	
20 Q You don't remember what kind of car you		20 Q What was the purpose of spending	
21 rented, true?		21 \$262.49 at a car wash?	
22 A I have no idea.		22 A That was probably detailing the truck	
23 Q You don't remember where you took that		23 and getting everything fixed up on it. Oil	
24 car, true?		24 change, et cetera.	
25 A True.		25 Q And you said probably. Are you	
	97		99
1 Q And you don't remember any specific		1 actually sure that that's what that was for?	
2 detail that would substantiate your claim that		2 A More than likely, to the best of my	
3 this payment benefited Takeover, correct?		3 recollection. Again, that was back --	
4 A No.		4 Q You get what?	
5 Q What's incorrect about it?		5 A -- in 2021.	
6 A Because anything I would have done		6 Q You get oil changes at a car wash?	
7 would have been business-related. Whether I drove		7 A You can here.	
8 to L.A., I don't know what that was in.		8 Q Did you regularly get oil changes at	
9 Q And my question was, you don't remember		9 Zoom Car Wash?	
10 a single detail --		10 A Once or twice a year, yeah.	
11 A No, not at this time --		11 Q And do you believe the car was	
12 Q -- that would substantiate -- you got		12 detailed? Is that what you're telling me?	
13 to let me finish my question, sir.		13 A To my best recollection, yes.	
14 You don't remember a single detail		14 Q Who authorized that purchase?	
15 that would substantiate your claim that this was		15 A No one.	
16 an expense that benefited Takeover, correct?		16 Q Did you submit any receipts to take	
17 THE WITNESS: Correct.		17 over to substantiate that purchase?	
18 MR. BENNION: Objection to the form of		18 A Yes. Plus the --	
19 the question. If we can just go a little bit		19 Q I'm sorry, I didn't hear you. What?	
20 slower, Toby, so I can object if necessary.		20 A Yes, plus the statement.	
21 Thanks, Counsel.		21 Q Who did you submit the receipt to?	
22 BY MR. HARVEY:		22 A It would've went to Mike.	
23 Q Next one -- the next one I wanted to		23 Q Mike Holley?	
24 ask you about is a January 21, 2022 payment of		24 A Yep.	
25 \$374.44 to Dick's Sporting Goods in Lodi. What		25 Q Next one I wanted to ask you about is	

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	100		102
1	January 22, 2022, \$472.46 to Dillard's, 960 Weber	1	true?
2	stow -- weber style. What is that charge for?	2	A No.
3	A That was personal, and that was paid	3	Q What was incorrect about my question?
4	back.	4	A I don't recall it. I don't recall the
5	Q When did you pay it back?	5	-- the purchase, so --
6	A Immediately.	6	Q Maybe we had a double negative. That
7	Q Why did you use --	7	was probably my fault.
8	A Within two days.	8	Do you remember any specific
9	Q Why did you use a company credit card	9	detail about this purchase that would substantiate
10	for a personal purchase?	10	a claim that it was made for Takeover's benefit?
11	A Because my other one wasn't with me,	11	A I don't recall at this time.
12	that's why. And so I paid it right back.	12	Q Okay. Next we've got -- need to go
13	Q And there's a record of you paying that	13	forward a couple pages to DEF-47. So we're on
14	back?	14	DEF-47, and if we scroll up a little we see this
15	A Of course there is.	15	is another Toby McBride section. And what I
16	Q Is it going to be in this bank	16	wanted to ask you about first off -- let's see,
17	statement that we're looking at?	17	where is it? Ah, here we go.
18	A I couldn't tell you. I don't -- I	18	On three -- or March 3, 2022,
19	don't control the bank. I don't control bank	19	we've got a \$1,200 payment to Brookside Country
20	statements. I don't -- I have no access to it.	20	Club; do you see that?
21	Q You said you paid it back within two	21	A Yep.
22	days?	22	Q What was that for?
23	A It would've been taken out of my	23	A That was approved by Jason Tucker.
24	monthly salary.	24	That was a country club that we brought clients to
25	Q So I want to make sure I'm clear. You	25	to do business with.
	101		103
1	didn't actually cut the company a check. It just	1	Q So what was the actual payment for,
2	was taken out of your monthly salary.	2	though?
3	Is that what you're telling me?	3	A Probably for the monthly fees, for two
4	A To my best of my recollection, yes.	4	months.
5	Q Who did you alert to this to make sure	5	Q Country club fees? Or when you say
6	that it was taken out of your monthly salary?	6	fees, what do you mean?
7	A Mike.	7	A We belonged to it for a short amount of
8	Q What is Dillard's?	8	time to bring clients to, distributors, retailers,
9	A Dillard's is like a Macy's.	9	here in California. And that was authorized by
10	Q Like a Macy's?	10	Jason. Actually, his idea.
11	A Exactly.	11	Q Is there documentation of this
12	Q Okay. Next one I wanted to ask you	12	authorization that you're talking about?
13	about is January 24. It's a \$477.44 charge to	13	A I couldn't tell you.
14	Best Buy.	14	Q If there was --
15	What was that for?	15	A I --
16	A I can't -- I can't -- I -- I have no	16	Q Go ahead. I'm sorry.
17	idea what that one is.	17	A No, go ahead.
18	Q What products did Takeover use that	18	Q Did anyone other than Jason Tucker
19	Best Buy sells?	19	authorize this?
20	A I couldn't tell you. We were probably	20	A No. Joe Pavlik knew about it, though,
21	buying a laptop or buying something to that, for	21	also. All three of us knew about it. All three
22	the company. I don't recall.	22	of us agreed.
23	Q As you sit here today, you have no	23	Q And why -- well, did you have -- did
24	recollection of any detail about what this	24	Takeover have country club memberships anywhere
25	purchase was for or how it benefited Takeover,	25	other than Brookside Country Club?

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	104		106
1 A No.		1 anyone else's house?	
2 Q And you're the only one who lives in		2 A Because I'm the one that's meeting with	
3 California out of the Takeover people who were in		3 retailers and Budweiser distributors and Miller	
4 charge at that time, correct?		4 distributors throughout the United States. So	
5 A Exactly.		5 when they were here, I would take them to go do	
6 Q And so you had access to a country		6 stuff every once in a while. That is why.	
7 club, whereas other directors and officers of		7 Q Okay. The next one --	
8 Takeover did not, correct?		8 A It --	
9 A Sure they did.		9 Q -- I wanted to ask you -- I'm sorry,	
10 MR. BENNION: Objection. Objection.		10 what?	
11 Assumes facts not in evidence. Calls for		11 A Go ahead.	
12 speculation. Lacks foundation.		12 Q The next one I wanted to ask you about	
13 BY MR. HARVEY:		13 -- we got to go down a few more pages to DEF-64.	
14 Q Go ahead, Mr. McBride.		14 And this is another Toby McBride section. And	
15 A I'm done.		15 here we've got a March 13, 2022, charge of	
16 Q I didn't hear your answer. I'm sorry,		16 \$6,463.95 to the Hilton Buena Vista Palace, I'm	
17 what did you say?		17 guessing that is.	
18 A I said sure they did.		18 Do you see that?	
19 Q Which country club was Takeover paying		19 A Exactly.	
20 for access for them too?		20 Q What was that charge for?	
21 A Well, when they were here, they had		21 A PFL event.	
22 access to it.		22 Q And say a little more on that if you	
23 Q Okay. None of the other ones even live		23 would.	
24 in California, though, correct?		24 A Professional Fighting League that we	
25 A No.	105	25 sponsored.	
1 Q What's incorrect about it?			107
2 A Jason was here all the time. Joe would		1 Q I understood what you meant by PFL. I	
3 come through --		2 mean, what do you mean -- why did -- why did you	
4 Q Did he live there?		3 spend \$6,400 for a PFL event?	
5 A Joe would come through all the time.		4 A We were there for a whole week.	
6 No.		5 Q Who's the we?	
7 Q Okay. Did Joe live in California?		6 A Me, Kirby. Joe came in. That's the we.	
8 A No.		7 Q Why were you there for a week?	
9 Q Did Jason live in California?		8 A They invited us to come out and we went.	
10 A Here and there he did.		9 Q Who's they?	
11 Q At this time in March of 2022, did he		10 A The PFL.	
12 live in California?		11 Q And it seems to show an arrival date of	
13 A No.		12 March 5 and a departure date of March 13. Do you	
14 Q And how far is Brookside Country Club		13 see that? Do you see that?	
15 from your house?		14 A Yep.	
16 A 15, 20 minutes.		15 Q PFL events are not typically five-day	
17 Q So this country club membership --		16 affairs, are they?	
18 well, strike that.		17 A PFL events at that time were filming	
19 It's your testimony, though, that		18 every other day, so yeah, they were. They weren't	
20 Mr. Tucker authorized a country club membership		19 live events yet.	
21 for a country club 15, 20 minutes from your house,		20 Q And for eight days, how much were the	
22 correct?		21 room -- was it one room or multiple?	
23 A Exactly.		22 A I couldn't tell you.	
24 Q Did -- why didn't Takeover authorize		23 Q So you don't know if this was lodging	
25 country club memberships for country clubs near		24 for just you?	
		25 A It's not lodging for just me.	

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	108		110
1 Q	Okay. In any event, you're claiming	1 Q	Who did you take to lunch during that
2 that the \$6,400 charge was benefiting Takeover.		2 time --	
3 Is that what you're saying?		3 A	I would take Budweiser there. I would
4 A	Exactly.	4	take Miller there. I would take retailers there.
5 Q	And how was it benefiting Takeover?	5	THE REPORTER: I'm sorry. Just a -- a
6 A	It's us broadening our brand with the	6	reminder to try and wait for each other to finish.
7 -- with the supplier that we're doing business		7	There's a lot of crosstalk. Thank you.
8 with.		8	BY MR. HARVEY:
9 Q	And can you say a little more about	9	Q Do you remember a specific individual
10 that? What -- I didn't hear. First of all, I		10	10 that you specifically took to Brookside Country
11 didn't hear what you said about something --		11	11 Club in that month?
12 A	It's us promoting -- it's us promoting	12 A	No.
13 our brand with -- with the people we're doing		13 Q	And so you're guessing that that's who
14 business with.		14	14 you took, but you don't actually know as you sit
15 Q	And what specifically did you do to	15	15 here today, correct?
16 promote your van -- brand during that trip?		16 A	I don't know who I took at that time.
17 A	Getting it in front of fighters,	17 Q	Did you ever take your family to eat at
18 getting it in front of other suppliers, getting it		18	18 Brookside Country Club?
19 in front of other sponsors that are involved		19 A	I did not.
20 there, athletes, et cetera.		20 Q	Did you ever take anyone, for example,
21 Q	Who authorized that trip?	21	21 a friend that had nothing to do with Takeover or
22 A	Jason Tucker.	22	22 distribution?
23 Q	Anyone else?	23 A	I did not.
24 A	No.	24 Q	Next one I want to ask you about was on
25 Q	Is there a written authorization?	25	25 DEF-78, another McBride section. And on April 15,
	109		111
1 A	No.	1	we've got a payment of \$281 to a cigar club in
2 Q	Next one, we've got another March 29	2	Modesto, California.
3 payment to Brookside Country Club for \$726. Do		3	What was that for?
4 you see that?		4	Personal and I paid it back.
5 A	Yep.	5	Q When did you pay it back?
6 Q	What was that for?	6	Again out of my -- it would've came out
7 A	Probably the monthly fees.	7	of my salary.
8 Q	You're saying probably, you're not sure?	8	Q Why did you use the company's credit
9 A	That's more than likely what it was.	9	9 card in the first place?
10 Q	By this time of March 29 -- well,	10	I couldn't -- don't recall.
11 actually let me back up. We asked a couple of		11	Q And there's records of you paying that
12 minutes ago -- or we were talking a couple minutes		12	12 back?
13 ago about a payment on March 3rd, 2022 to		13	There's always records of me paying
14 Brookside Country Club for \$1,200. Why were you		14	stuff back.
15 making an additional payment to Brookside Country		15	Q Who's got those records today?
16 Club on March 29 the same month?		16	Auditors, accountants.
17 A	I don't -- I don't -- I couldn't tell	17	Q Which auditors and accountants?
18 you. I don't recall.		18	Again, I -- I told you I don't know who
19 Q	If you made two payments in the same	19	these guys are.
20 month that totaled about \$2,000, are you -- how		20	Q So how are you positive that they have
21 can you be positive that this was for --		21	21 the records?
22 A	More than likely -- more than likely it	22	Because we went through an audit and
23 would be lunches or -- or food that was during		23	through two audits and through two different
24 that month. So during that two month time, that		24	accounting firms to get our book straight after
25 was bought.		25	your client and -- and Jason Tucker tried to take

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	112		114
1 my company back. That's how. That's why it's --		1 Brookside Country Club \$2,000 and change. What	
2 that's why it's -- that's why it's public again		2 was that for?	
3 right now.		3 A That was probably for three months of	
4 Q So the next one I wanted to ask you		4 payments that -- that Jay should push back and	
5 about was on DEF-112. We've got a June 17, 2022		5 then that's what was due then. He was pretty good	
6 charge for the Georgia Aquarium.		6 at not paying bills and telling you he paid bills,	
7 Do you see that?		7 so.	
8 A Exactly.		8 Q As of July 2022, did Takeover have --	
9 Q What is that for?		9 or was it paying for Country Club dues or fees for	
10 A That was a PFL event that we went with		10 any other officer or director other than you?	
11 a couple of the people that came in for the PFL,		11 A No.	
12 too.		12 Q Next one, we're still on that same	
13 Q What does a PFL event have to do with		13 page. We've got an August 1st, 2022 charge for	
14 the Georgia Aquarium?		14 \$342 to Yankee's Clubhouse in New York, New York.	
15 A They were going and asked us to go, so		15 What is that for?	
16 we went.		16 A Personal and paid it back.	
17 Q Who's the they?		17 Q How did you pay it back?	
18 A They would be a part of the PFL.		18 A With my salary within like five or six	
19 Q Names, though. Who are they?		19 days of me returning home.	
20 A Couldn't -- I couldn't tell you.		20 Q Why did you use your company credit	
21 Q How many of them were there?		21 card for that?	
22 A I -- I don't recall.		22 A Because my salary didn't come through	
23 Q Who went with you?		23 from Jason.	
24 A Joe Pablo.		24 Q Why not?	
25 Q So you're saying that PFL people, who		25 A Couldn't tell you.	
	113		115
1 you can't name, said they were going to the		1 Q Is the same true of the August 2 --	
2 Georgia Aquarium and you went with them?		2 where is it. Purchased from the MLB store?	
3 A PFL, other -- other sponsors.		3 A Yep. Same thing.	
4 Q How did going to an aquarium benefit		4 Q Personal expense?	
5 Takeover?		5 A Yep.	
6 A It's called relationship building.		6 Q Did you pay that back?	
7 That's how it benefits Takeover.		7 A Yes, sir.	
8 Q How does going to an aquarium benefit		8 Q And why'd you use the company credit	
9 relationship building?		9 card?	
10 A Number one, you're around people that		10 A Same -- same trip.	
11 you're building relationships around to do better		11 Q How about the NBA store purchase? Was	
12 business with and to understand how they do their		12 that also a personal expense?	
13 business and the -- and the push forward with		13 A Same.	
14 yours. That's how it's relationship building.		14 Q So yes, it was personal?	
15 Q Who authorized an expenditure at an		15 A Yes, sir.	
16 aquarium for Takeover?		16 Q And did you pay that back?	
17 A Nobody.		17 A Yes, sir.	
18 Q Next one I wanted to ask you about was		18 Q Why'd you use the card -- the company	
19 on DEF-127. So we're going to scroll out a little		19 credit card?	
20 more. So there's a couple of charges I wanted to		20 A I wasn't paid my salary by Jason and he	
21 ask you about here. There's two to AT&T. The		21 knew it. And I used the card and then paid it	
22 total about \$550 on July 23rd, 2022.		22 back right when I got back.	
23 What were those for?		23 Q Now I want to go back up to the	
24 A Probably my cell bill.		24 beginning of this document and ask you a couple of	
25 Q And then beneath that we've got		25 other questions. So if we look at DEF-23, this is	

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	116		118
1 a section that says withdrawals and other debits.		1 scattered all over the place with everybody.	
2 Do you see that? Do you see that, Mr. McBride?		2 Q Who -- who had control of the account	
3 A Yep.		3 as of January 2022?	
4 Q And in this section on January 3rd,		4 A Jason.	
5 there's a transfer to you in the amount -- or		5 Q When did he obtain control of the	
6 there's a transfer from Takeover to you in the		6 account?	
7 amount of \$10,000, correct?		7 A November or December of '21.	
8 A Yes.		8 Q And did you have a regular salary that	
9 Q Why was Takeover transferring you		9 you were paid? In other words, the same amount?	
10 \$10,000 on January 3rd, 2022?		10 A Yes.	
11 A Probably a part of my salary. Again, I		11 Q Because I think you told me you got	
12 don't access the account. Have no access to		12 \$240,000 a year, correct?	
13 account. Can Zelle or not Zelle anything from the		13 A Right.	
14 account.		14 Q Did you get a regular, whether it was	
15 Q What is Zelle?		15 weekly, or monthly, or whatever, was the check the	
16 A Zelle is like a wire transfer that I		16 same amount each time for your salary --	
17 have zero access to.		17 A It would -- it would value from what it	
18 Q And when you say probably part of your		18 was supposed to be, the minus five seven, grand	
19 salary, why do you say probably part of your		19 every month --- it would it would -- it would	
20 salary?		20 vary. I -- I don't recall.	
21 A It's more than likely what it was. I		21 Q Okay. As you sit here today, though,	
22 -- I wasn't -- I don't recall what that is. If		22 you don't know for sure why you got a \$10,000	
23 I'm getting money from Takeover, it's my salary.		23 payment from Takeover on January 3, 2022; is that	
24 Q Well, for example, beneath that there's		24 correct?	
25 an entry that says payroll on January 4.		25 THE WITNESS: That would've been --	
	117		119
1 Do you see that?		1 MR. BENNION: Excuse me, Toby.	
2 A Yep.		2 Objection. Asked and answered. Go ahead. Go --	
3 Q So if that was your salary, why		3 go ahead, Toby.	
4 wouldn't it say payroll --		4 THE WITNESS: I'm done.	
5 A I couldn't tell you --		5 BY MR. HARVEY:	
6 Q -- on that one?		6 Q You didn't actually answer that	
7 A -- again, maybe you're not -- maybe		7 question?	
8 you're not listening to what I'm saying. I have		8 A I answered it before. More than likely	
9 zero access to the account. Cannot Zelle, cannot		9 it was part of my salary. It was in 2022. I	
10 pull from the account, cannot make deposits to the		10 don't -- I don't recall.	
11 account. So maybe you should ask Jason Tucker		11 Q My question was slightly different. As	
12 these questions. Not me because I have no idea.		12 you sit here today, you don't remember for sure	
13 Q So as you sit here today, you have no		13 why you received \$10,000 from Takeover on January	
14 idea why Takeover transferred \$10,000 to you on		14 3rd, 2022, correct?	
15 January 3rd, 2022?		15 A Again, I would only receive money from	
16 A Again, that was probably part of my		16 Takeover if it was part of my salary. That's it.	
17 salary. That was two years ago. I don't recall		17 There is no gray area. It's black or it's white.	
18 what that was. More than likely, 98 percent, it's		18 That's it.	
19 my salary.		19 Q So you're positive that -- that was	
20 Q Were you paid -- what was the cadence		20 part of your salary payment?	
21 of your payments? Was it monthly, weekly? What		21 A Yes.	
22 was the -- your salary payments?		22 Q Next one I wanted to ask you about is	
23 A When -- when Mike was in -- when Mike		23 down on the next page, so DEF-24. So on -- oh,	
24 had the account, it was monthly. When Jason was		24 wrong one. Sorry. January 10th. There's another	
25 in -- in charge of the account, it -- it was		25 -- so we're just one week after January 3rd, 2022,	

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	120		122
1 there's another transfer from Takeover to you in 2 the amount of \$10,000, correct?		1 A No. Yes, sir.	
3 A Yes.		2 Q Okay. The next one is on DEF-40.	
4 Q And so two weeks into the new year, 5 you've been paid \$20,000 from Takeover, correct?		3 We've got a February 14, 2022 transfer from 4 Takeover to you in the amount of \$5,000; do you 5 see that?	
6 A Yes.		6 A Yep.	
7 Q And if that cadence continued, you 8 would've been paid \$40,000 that month, correct?		7 Q Why did you receive \$5,000 from 8 Takeover on February 14, 2022?	
9 A If that cadence would've continued, but 10 that cadence didn't continue.		9 A You'd have to ask -- would be part of 10 my salary, but again, you'd have to ask Jason 11 Tucker.	
11 Q Okay. Do you know what this payment 12 was for on January 10, 2022?		12 Q So you seem to be giving me the same 13 answer to every one of my questions about these 14 transfers. I have -- I'll tell you I'm seeing 15 about 31 more. I can go through them all one by 16 one or we can try and be a little more efficient. 17 I'll just tell you this document that we're 18 looking at, there are payments referenced on this 19 document from Takeover to you on February 24, 20 2022, and these dates are all 2022, unless I say 21 otherwise, February 24, March 1, March 14, March 22 29, April 5, April 15, April 20, April 29, May 6, 23 May 13, May 19, May 26, another one on May 26, 24 June 21, June 27, July 1, July 8, July 20, July 25 28, August 22, September 1, September 7, December	
13 A Either late payment on my salary from 14 December not getting paid or I'm not too sure. 15 You have to ask Jason Tucker these questions.			
16 Q Well, I'm asking you, is this --			
17 A I have no -- I have no control. I have 18 no control back in time.			
19 Q You got to let me finish my question, 20 sir.			
21 As you sit here today, do you know 22 specifically why you received \$10,000 from 23 Takeover on January 10, 2022?			
24 A No, I do not. But it's funny how you 25 see Jason's name -- Jason's Company right			
	121		123
1 underneath mine. Very odd.		1 12, December 16, December 19, January 6, January	
2 Q So then the next one --		2 10. Oh, I'm sorry. So that's all the 2022 dates.	
3 A I noticed, is there -- I -- I noticed 4 that Jason never brought up on this, it's probably 5 because he's still talking to your client.		3 And then these dates are 2023, January 6, January	
6 Amazing.		4 10, February 1, March 2, March 27, September 21, 5 December 6.	
7 Q The next one I wanted to ask you about 8 is January 27, 2022. And we see another Takeover 9 transfer from -- to you in the amount of \$7,500, 10 correct?		6 If I asked you the same questions 7 about all of those and by the same questions, I 8 mean, do you know why you received payments from 9 Takeover on those dates? Would your answer be 10 what you've just been answering me, you don't know 11 why you received those payments?	
11 A Correct.		12 A It would've been part of my salary.	
12 Q Why did you receive \$7,500 from 13 Takeover on January 7 or 27, 2022?		13 Q Okay. And I suspect you didn't commit 14 those dates to memory and we can go through one by 15 one, but if you look at them, there's not a 16 regular pattern to them.	
14 A I don't recall. You'd have to ask 15 Jason Tucker that question.		17 A There was never a regular pattern on 18 how we were paid. We made sure everybody else was 19 paid and they -- all the bills were taken cared of 20 before we were paid. So it wasn't like the 1st 21 and the 15th. So again, you'd have to ask Jason 22 Tucker how -- why those went out that way. But 23 the only reason they would come to me would've 24 been part of my salary. So just so we're clear. 25 And I have zero access again, to any bank account,	
16 Q Next one is on DEF-39. And the first 17 question I wanted to ask you is about this 18 February 2, 2022 transfer for Takeover to you in 19 the amount of a thousand dollars; do you see that?			
20 A I see it, but I have no idea what that 21 is. And again, I don't -- I can't make Zelle 22 transfers. You have to ask Jason Tucker.			
23 Q So you don't know why you received a 24 payment from Takeover of a thousand dollars on 25 February 2nd, 2022; is that correct?			

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1 i n a wire, to money to know what's in there. I		1 you were receiving all of these 31 transfers on	
2 r elied on Mike and Jason.		2 the dates I just referenced and they all ended in	
3 Q So the -- and I'll tell you too, all of		3 round numbers?	
4 these payments, and again, I'm happy to go through		4 A I could I -- I have no idea. I don't	
5 all 31 additional if you'd like me to, but they		5 recall.	
6 all end in the zero -- zero and they're differing		6 Q Is the fact that they all ended in	
7 amounts. For example, the December 12, 2022		7 round numbers, but you assume taxes were being	
8 payment is for 400 -- well, this one isn't a zero		8 withheld; does that cause you to question your	
9 -- zero, but ends in a round number. It's \$450,		9 assertion that this was all payroll payments?	
10 but then we also see payments on, for example,		10 A No.	
11 September 7, '22 for \$10,000, but they all are		11 Q Why not?	
12 round numbers and they're all differing amounts.		12 A Just doesn't.	
13 So my question for you is		13 Q Okay. And the fact that one of these	
14 companies are generally with -- required to		14 payments, for example is for \$450, you're telling	
15 withhold taxes, and I don't see how these could		15 me that -- that was your payroll for that date?	
16 all be round numbers if this was in fact payroll.		16 A Again, I don't recall.	
17 Do you have any explanation for		17 MR. BENNION: Hold -- hold on.	
18 how these could all be round numbers, especially		18 Objection. Lacks foundation. May call for	
19 given that they were so different?		19 speculation. Go ahead.	
20 A I do not recall.		20 BY MR. HARVEY:	
21 Q Did the company withhold taxes from		21 Q If you answer, I didn't hear. Your	
22 your paycheck?		22 lawyer was talking.	
23 A I pay -- I paid my taxes at the end of		23 A I don't recall.	
24 the year. Yes.		24 Q Okay. So but you're telling me you're	
25 Q Did the company withhold --		25 positive that every one of these payments was	
	125		127
1 A I believe so.		1 payroll?	
2 Q What's that? I'm sorry. What did you		2 A To my best of my recollection, yes.	
3 say?		3 Q Now --	
4 A I don't recall.		4 A So the reason why I would get -- only	
5 Q So you don't know as the CEO one way or		5 reason why I would get transfers.	
6 another, whether Takeover was withholding taxes		6 Q At a certain point, you and the others	
7 from your payments; is that what you're telling me?		7 pushed Mr. Tucker out of Takeover, correct?	
8 A Taxes were claimed at the end of the		8 MR. BENNION: Objection to the form of	
9 year.		9 the question. Calls for speculation. Go ahead.	
10 Q So you're telling me that Takeover did		10 Vague and ambiguous.	
11 not withhold taxes from your --		11 THE WITNESS: Ask the question again?	
12 A I'm -- I'm not -- not telling you		12 BY MR. HARVEY:	
13 anything. I don't recall.		13 Q At a certain point, you and the others	
14 Q Well, that's what I'm asking you, did		14 pushed Mr. Tucker out of Takeover, correct?	
15 Takeover withhold taxes from your payroll?		15 A Yeah, by finding out what he was doing	
16 A I don't recall.		16 with your client, so yes.	
17 Q As the CEO of the company up through at		17 Q And when was this that he was pushed	
18 least a portion of 2023, you don't recall whether		18 out of Takeover?	
19 the company withheld taxes; is that what you're		19 A Early November, I believe.	
20 telling me?		20 Q So who was responsible for payroll	
21 A I -- I -- I don't -- I don't recall. I		21 after he was pushed out of the company?	
22 -- I would assume that that's what would've		22 A Mike.	
23 happened, but I don't recall.		23 Q Mike Holley?	
24 Q And so if you're assuming that that's		24 A Yes. It wasn't me. It was Mike.	
25 what would've happened, how is it possible that		25 Q Okay. So any transfers to you after	

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1	Mr. Tucker was pushed out of the company, it's 2 your testimony that Mike Holley would've been 3 responsible for those; is that what you're telling 4 me?	1 but no, I -- I don't recall. I'm not going to 2 disagree with that. I'm not going to agree with 3 it either. So whatever Tom says -- tom says, that 4 has nothing to do with me.	
5	A To the best of my recollection, we 6 didn't pull payroll after that point.	5 Q Okay. Well, let's use your -- let's 6 use your -- let's use your date. I'm just trying 7 to set up a bookend here. So when did Mr. Tucker 8 join the company? Ballpark is fine. I don't need 9 an exact date.	
7	Q After what point?		
8	A I don't believe after November, 9 December, if it was, it was like five grand.	10 A If you remember what I told you, 11 February, March -- February or March, in between 12 there, of '21.	
10	Q So for example, if we go to DEF-334, 11 there's a December 6, 2023 payment from Takeover 12 to you for \$10,000, correct?	13 Q Okay. And so you're saying that at 14 least as of that date, Takeover's liabilities 15 exceeded its assets, correct?	
13	A Yes.	16 A We were moving hydrogen water. We did 17 a quarter of a million our first month when we 18 started doing hydrogen water. And every month, 19 then we would probably bring in 100 to 150,000 a 20 month until, you know, four or five months in when 21 Jason wanted to go the short direction. So -- so 22 I wouldn't know. It's -- it's possible.	
14	Q And this was over a year after Mr. 15 Tucker had been pushed out of the company, correct?	23 Q To your knowledge, when was the first 24 -- when was the first time that Takeover's assets 25 or Takeover's liabilities exceeded its assets?	
16	A Yes.		
17	Q And this was a year after the lawsuit, 18 this lawsuit had been filed, correct?		
19	A That -- that would've been for -- for 20 -- for me leaving the company and moving my 21 shares, so that's what that is.		
22	Q How are you sure about that?		
23	A Because I know what that is. That's 24 when I left the company.		
25	Q Is there some written document		
	129		131
1	authorizing a payment of \$10,000 to you in 2 exchange for you leaving the company and doing 3 what with your shares?	1 MR. BENNION: Objection. Lacks 2 foundation. May call for speculation. Go ahead.	
4	A I sold part of my shares back to the 5 company. There is documents. There's -- there's 6 documents signed by the board of directors.	3 THE WITNESS: I couldn't tell you.	
7	Q Authorizing this payment or a different 8 payment?	4 BY MR. HARVEY:	
9	A Authorizing the whole transaction.	5 Q As of November, 2022, you'd agree with 6 me that Takeover's liabilities exceeded its 7 assets, correct?	
10	Q How much specifically -- well, are you 11 claiming this \$10,000 all of it was in exchange 12 for selling your shares or only a portion of it?	8 A No.	
13	A Portion of it.	9 Q Why do you say no?	
14	Q How much of the 10,000?	10 A I just don't believe they did. But 11 again, I'm not seeing the bank accounts. I'm only 12 seeing what my sales team is doing and what's 13 going on in the market. So whatever Tom told you, 14 Tom -- that's Tom's opinion.	
15	A I don't recall.	15 Q Well, Tom has been CEO of Takeover 16 since April, 2023, correct?	
16	Q And you're claiming that there's 17 documentation showing that this was authorized?	17 A To the best of my knowledge.	
18	A There is documentation.	18 Q Okay. And are you disagreeing with him 19 that Takeover's liabilities exceeded its assets at 20 least as of that date?	
19	Q Okay. I'll represent to you that 20 yesterday, Mr. Zarro testified that Takeover's 21 liabilities exceeded its assets, essentially, from 22 the day after Takeover was opened in early 2021. 23 Do you disagree with Mr. Zarro's testimony on that?	21 A Possibly, but I don't know for sure.	
24	A I would agree after Jason came in, 25 that's probably, you know -- could possibly be,	22 Q And in terms of why Mr. Depoletto was 23 not repaid, several witnesses have testified that 24 one of the reasons was because Takeover didn't 25 have the money to repay him as well as PFL. Do	

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1	you disagree with that testimony?	1	payment in December, 2023 from Takeover?
2	A I wouldn't disagree with that, but I'll	2	A That would've been part of my
3	also say that Mr. Deppoleto was reached out to	3	settlement when I walked away.
4	more than enough times to pay him back and that	4	Q Okay. And is there a formal settlement
5	did not happen. He would have been paid back twice	5	agreement?
6	over by now.	6	A Yep, there is. Approved by the board
7	MR. BENNION: I'm going to state a	7	of directors and filed. That was public.
8	belated objection that to that question. That's a	8	MR. HARVEY: Counsel, that's an --
9	compound question. Go ahead.	9	counsel, that's another document that we have not
10	THE WITNESS: Just so you know,	10	been provided. So I'm going to request it.
11	Patrick, I have no knowledge of when he's reached	11	MR. BENNION: So for clarification,
12	out to or what they do or -- or when they made,	12	that would be a settlement agreement drafted and
13	what do you call it, settlement agreements with	13	-- and perhaps filed when --
14	him. I'm -- I'm not kept in the loop on that	14	THE WITNESS: It was filed public.
15	part, so I stay out of it. It's the only way to	15	MR. BENNION: Okay. Okay. Toby,
16	keep my distance.	16	please -- please don't talk over me. We need the
17	BY MR. HARVEY:	17	court reporter to get an accurate record. That
18	Q When did Takeover stop actively doing	18	19 was filed publicly showing the settlement of Toby
19	business?	19	McBride when he left. When you left Takeover. Is
20	A I couldn't tell you. I was gone.	20	21 that what we're -- is that what you're requesting,
21	Q When did you leave?	21	22 Counsel?
22	A Early. Excuse me. Early January.	22	MR. HARVEY: That's what I understood
23	Q Of --	23	24 him to be saying.
24	A '23.	24	MR. BENNION: Okay.
25	Q -- what year? And was -- well, now I'm	25	BY MR. HARVEY:
		133	
1	confused.	1	Q All right. So if you left -- so your
2	A Well, I was really, you know, the -- I	2	testimony is that even though you left the company
3	-- I started exiting in -- in -- in, you know,	3	in around January, 2023, you were receiving this
4	kind of, December into January. I just had to	4	\$10,000 payment in December, 2023, because of a
5	stay away from it.	5	settlement you entered into with Takeover. Is
6	Q 2022 or 2023?	6	6 that what you're telling me?
7	A 2022.	7	A Yeah, to separate myself and walk away.
8	Q So you exited in January, 2023?	8	Q And when you say settlement, had you
9	A Let me get the -- let me make sure the	9	threatened litigation against Takeover?
10	dates are straight. When the -- the year we got	10	A No. We were all on the same page. Why
11	11 -- the day we got rid of Jason was what year?	11	I would I sue my own company? There's no reason to
12	12 That was 2022, correct? Was that '23? I get	12	12 do that.
13	13 confused on years, so my apologies. So whatever	13	Q Well, that's what I was curious about,
14	14 the day -- day was we got rid of Jason, within a	14	14 too. But you were calling it a settlement and
15	15 couple of months, I had had enough.	15	15 typically a settlement means you're settling
16	Q Okay. Well, Mr. Holley, I believe the	16	16 disputed claims.
17	evidence shows, reentered the company November.	17	A No. Settlement meaning that I had
18	In fact, I can go over the board resolutions if	18	shares. I wanted to not have nothing to do with
19	you want.	19	the company anymore. I -- I needed to start my
20	A Yes.	20	21 life over, as you could understand, and get my own
21	Q But reentered company around November	21	22 life back. And by doing that, it's me walking
22	22 '22?	22	23 away. But me walking away as the CEO had to be
23	A There -- so it was -- I was right after	23	24 done the right way through the SEC through FINRA,
24	24 that.	24	25 through -- so those are the processes that we took.
25	Q Okay. So why were you receiving this	25	Q Did anyone, to your knowledge -- well,

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1 I'll ask it two ways.		1 probably still -- I don't remember. 20, 30	
2 One, did you consult Mr. Deppoleto		2 remaining, but I just squashed that out.	
3 about receiving this \$10,000 payment in December,		3 Q I'm not sure I'm tracking what you're	
4 2023, before you received it?		4 saying there. Can you explain that a little more?	
5 A I haven't talked to your client since		5 A I probably received about 15 in that	
6 July of '22.		6 amount of time, and then they probably owed me	
7 Q So the answer to my question is --		7 another 20, 30. But, you know, they were going	
8 A No.		8 through things, so I wasn't worried about it.	
9 Q And again, I'm trying to get you out of		9 Q So if I'm understanding you, you	
10 here quickly.		10 believe you were supposed to be receiving in total	
11 A No, I gotcha. Sorry, Patrick.		11 35 to \$45,000, correct?	
12 Q No problem. To your knowledge, did		12 A I believe so. I don't recall. I got	
13 anyone from Takeover consult Mr. Deppoleto before		13 to go back and look.	
14 Takeover made this \$10,000 payment to you in		14 Q Okay. But you're telling me that you	
15 December, 2023?		15 think you only actually received \$15,000 of that.	
16 A I don't recall.		16 Is that what you're telling me?	
17 Q And then if we go up to DEF-300, and		17 A That's what it looks like, I believe	
18 we're in the withdrawals and debit section,		18 so. But I'm not -- I couldn't be confident.	
19 there's, you know, a September 21, 2023 payment		19 Q And when did you enter into this	
20 from Takeover to you of \$5,000, correct?		20 agreement with Takeover?	
21 A Yep.		21 A December, 2022, I believe. I don't	
22 Q Why did you receive a \$5,000 payment		22 recall. Everything's -- everything was -- once we	
23 from Takeover in September, 2023, which was about		23 took the company over, everything was detailed	
24 eight months after you left?		24 that we did, because of Jason. So everything was	
25 A That would've been probably the		25 written down. Everything was spelled out.	
	137		139
1 remainder of what I was getting from them.		1 Everything was very fine-tooth. We were going	
2 Q What do you mean the remainder of what		2 through two audits. We had two different	
3 you were getting?		3 accounting firms. So everything had to be	
4 A The remainder of my settlement, I		4 checked, double-checked, triple-checked. So even	
5 believe, but I don't recall.		5 that process, I know it was a four or five-page	
6 Q Well, so September, 2023 is before		6 document that I had.	
7 December, 2023. So why are you saying it's the		7 Q And this was a signed agreement between	
8 remainder?		8 you and Takeover; is that correct?	
9 A 9-22-23? Hold on a second. I'm trying		9 A Yes, sir. Total separation.	
10 to see what that -- that would've been part of my		10 Q So you obviously signed on your own	
11 -- I believe that would've been part of my		11 behalf. Who signed off on it from the Takeover	
12 settlement agreement.		12 side?	
13 Q What was your understanding? Because I		13 A I believe it was Tom, and Mike, and	
14 haven't been provided -- I obviously would prefer		14 Joe. I believe all of them had to sign up on it.	
15 to just look at it, but I haven't seen it. So		15 Q Tom Zarro.	
16 what was your understanding of how the -- the		16 A Mike Holley.	
17 settlement as you keep describing it, what was the		17 Q Mike Holley.	
18 deal?		18 A Joe Pavlik.	
19 A I would get so --		19 Q So I want to make sure the record's	
20 Q What were you --		20 clear, because we were talking over each other.	
21 A I would get so much upfront, and then		21 So you're telling me that on behalf of Takeover,	
22 they would get the majority of my shares.		22 Tom Zarro, Mike Holley, and Joe Pavlik signed off	
23 Q How much did you get upfront and how		23 on this settlement that you've been describing; is	
24 much were you supposed to get total?		24 that correct?	
25 A I think I got 15 total and there was		25 A Yeah, I believe that's how it worked.	

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1 Q Okay. So then I want to ask you about 2 -- if we go to DEF-235, in the withdrawal section, 3 there's a March 27th, 2023, payment of \$5,000 from 4 Takeover to you; do you see that?		1 Q Same meaning this was part of your 2 settlement agreement, that's why you're receiving 3 it?	
5 A Yes, sir.		4 A Yes. Yes, sir. They were going to try 5 to do one big -- you know, one decent payment, and 6 then pay when they could.	
6 Q What was the purpose of that payment?		7 Q So if we go up to DEF-211. It's a 8 January 10 payment of \$3,000 to you; do you see 9 that?	
7 A Anything that would've come from them, 8 Patrick, would've been part of my settlement 9 agreement.		10 A Yeah.	
10 Q Okay. So your testimony is that even 11 though you left the company in January, 2023, you 12 were receiving this payment from the company in 13 March or on March 27th, 2023 as part of the 14 settlement agreement that you've been describing; 15 is that correct?		11 Q What was that for?	
16 A Right. Because I didn't get it all 17 upfront, I got it pieced. So whenever they could 18 manage to give me, they would. I was more than 19 cooperative, to put it that way.		12 A Same.	
20 Q And I might have asked you this before, 21 but I -- I wanted to make sure just in case I 22 didn't. Did Mister -- did you disclose to Mr. 23 Deppoleto before you signed it, this settlement 24 agreement that you've been referring to?		13 Q Settlement?	
25 A I've had no conversation with -- with		14 A Yes, sir.	
1 your client.	141	15 Q And then if we go up to DEF-10. 16 January 6, 2023, there's a \$2,000 payment from 17 Takeover to you, correct?	
2 Q To your knowledge, did anyone from 3 Takeover disclose this settlement agreement to Mr. 4 Deppoleto before it was executed?		18 A Yes. See, they were piecing them.	
5 A I don't believe so, but this is public 6 information, so --		19 Yeah. Yes, sir, same.	
7 Q So then --		20 Q This was part of your settlement?	
8 A Okay.		21 A Yes, sir.	
9 Q -- if we go up to DEF-234. On March 2, 10 2023, we see another payment from Takeover to you 11 of \$4,000, correct?		22 MR. BENNION: I'm just going to state 23 an objection to the form of the question.	
12 A Yep.		24 MR. HARVEY: Okay.	
13 Q And this was, again, after you had 14 already left the company, correct?		25 MR. BENNION: And -- in -- in concert	
15 A Yes, sir.			143
16 Q And what was this payment for?		1 with the prior questions, where the dates were 2 rattled off very quickly, Counsel. There were, I 3 think you said, 31 dates. And there was testimony 4 received by Mr. McBride at that time. My question 5 is foundation because now we're going back 6 through, it looks like, each of those transactions 7 with different questions. So I just want to state 8 that for the record.	
17 A That's part of my settlement.		9 BY MR. HARVEY: 10 Q So then, if we look at DEF-197. On 11 12/19, 2022, there's a \$3,200 payment to you from 12 Takeover, correct?	
18 Q Okay. And then if we go up to --		13 A Right.	
19 A I believe the first one was in January 20 or February --		14 Q What was this payment for?	
21 Q Okay.		15 A That would've just been part of just 16 getting caught up because I hadn't been paid, 17 probably, since September, October, November of 18 that whole year. So that's pretty much all we 19 could manage to take care of, bills that were 20 stacking up on us, that I recall, so 3200.	
22 A -- I believe.		21 Q When you -- I'm sorry, I thought you 22 were done. When you say getting caught up, what 23 do you mean? What specifically? Why did you 24 receive that payment?	
23 Q DEF-222. We've got a February transfer 24 of \$5,000 from Takeover to you, correct?		25 A We didn't take -- to my recollection,	
25 A Same.			

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1 we didn't take any -- any salary or anything. We 2 were trying to get the account squared. Once we 3 got it back, we tried to take care of Michael and 4 Michael, and get them caught up before we had to 5 unfortunately let them go.		1 in the hospital. 2 Q I -- I didn't hear the last part of 3 your answer, I'm sorry.	
6 Q So you're saying this December 19, 2022 7 payment was payroll?		4 A I said possibly one when he was in the 5 hospital.	6 Q I'm going to show you another exhibit 7 now.
8 A I believe so.		8 MR. HARVEY: We'll mark -- is this 9 Exhibit 4? I'm sorry, I lost count.	10 THE REPORTER: Sorry. Give me one 11 moment.
9 Q Okay. And so, anything that you 10 received from the company before December 19, 11 2022, is it your testimony that that was all 12 payroll?		12 MR. BENNION: Counsel, are we at a good 13 time for a stopping break, maybe in the next 10 or 14 15 minutes?	12 MR. HARVEY: Yeah. Next 10 or 15 16 minutes, maybe even closer to five.
13 A I believe so, yes, sir.		13 MR. BENNION: Okay.	13 THE REPORTER: And yeah, so this would 14 be 4.
14 Q But you're not positive? You keep 15 saying I believe so.		14 MR. HARVEY: Okay. Thank you.	14 MR. HARVEY: Okay. Thank you.
16 A Like I said, I have no access to the 17 account. So anything that would've came to me 18 would've been part of payroll, until after I left. 19 Anything after I left would've been part of my 20 settlement agreement.		15 (EXHIBIT 4 MARKED FOR IDENTIFICATION)	15 (EXHIBIT 4 MARKED FOR IDENTIFICATION)
21 Q Have you received any payments from 22 Takeover since December 6, 2023?		16 BY MR. HARVEY: 17 Q So I'm showing you what we've marked as 18 Exhibit 4. This is Bates labeled, on the first 19 page anyways, DEF-560. And there's a couple	16 BY MR. HARVEY: 17 Q So I'm showing you what we've marked as 18 Exhibit 4. This is Bates labeled, on the first 19 page anyways, DEF-560. And there's a couple
23 A I don't believe so.	145		
24 Q Are you aware that Michael Holley 25 charged personal expenses to Takeover?		1 emails in here. 2 The one I wanted to ask you about 3 is this Jason Tucker e-mail dated March 2, 2022; 4 do you see that?	1 emails in here. 2 The one I wanted to ask you about 3 is this Jason Tucker e-mail dated March 2, 2022; 4 do you see that?
1 MR. BENNION: Going to state an 2 objection. Lacks foundation. Calls for 3 speculation. Go ahead.		5 A Yes. 6 Q And you were copied on this e-mail, 7 correct?	5 A Yes. 6 Q And you were copied on this e-mail, 7 correct?
4 MR. HARVEY: Go ahead, Mr. McBride.		8 A Yep. 9 Q Go ahead and read it to yourself real 10 quickly, and then I just want to ask you a quick 11 question about it.	8 A Yep. 9 Q Go ahead and read it to yourself real 10 quickly, and then I just want to ask you a quick 11 question about it.
5 THE WITNESS: I -- I don't -- I don't 6 think so. I don't recall any of that.		12 A I've seen this before. 13 Q Okay. Have you read it before?	12 A I've seen this before. 13 Q Okay. Have you read it before?
7 BY MR. HARVEY:		14 A Right. Yes, sir. 15 Q Okay. You see the line where he says. 16 Again, I appreciate you	14 A Right. Yes, sir. 15 Q Okay. You see the line where he says. 16 Again, I appreciate you
8 Q You were never aware of Mr. Holley 9 charging personal expenses to Takeover?		17 understanding the situation that Holley placed us 18 in.	17 understanding the situation that Holley placed us 18 in.
10 A No.		19 A Yeah. 20 Q Do you know what he's referring to as, 21 the situation that Holley placed us in?	19 A Yeah. 20 Q Do you know what he's referring to as, 21 the situation that Holley placed us in?
11 Q Do you remember allegations about Mr. 12 Holley charging personal expenses to Takeover?		22 A Jason had a very particular way of 23 putting blame on somebody else for his faults, of 24 what he was doing. So again, he was trying to say 25 Mike took money. Mike never took money. That was	22 A Jason had a very particular way of 23 putting blame on somebody else for his faults, of 24 what he was doing. So again, he was trying to say 25 Mike took money. Mike never took money. That was
13 A Yeah, from Jason.			
14 Q Do you remember what the dollar amount 15 he was alleged to have taken?			
16 A I couldn't tell you. It was some 17 exaggerated number by Jason Tucker.			
18 Q Do you know when Mr. Holley was alleged 19 to have charged personal expenses to Takeover?			
20 A Jason was forming his plot was when 21 Mike was in the hospital sick, I believe at late 22 October, early November.			
23 Q Did Mr. Holley's family members make 24 personal purchases that were charged to Takeover?			
25 A I don't recall. Probably when he was			

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1 proven in court that Mike never took anything. So 2 he was just lying to Tom Zarro about payments. 3 And, mind you, he talked to Tom once or twice a 4 week, so this e-mail is just to back up his 5 bullshit lies.		1 the truth that it was public information. Isn't 2 this something his attorneys are supposed to do, 3 due diligence? That would be your job, not my 4 job. This was public information. We were a 5 public company, not private, which him and Jason 6 tried to take us private.	
6 Q So this is dated March 2, 2022, which 7 is much earlier than the time frame you were just 8 referring to a couple of moments ago. Because you 9 were anchoring it to when Mr. Holley was in the 10 hospital, I thought?		7 So yes, he knew. He can sit there 8 and tell you he didn't know. It was public 9 information. He knew at the Dallas event what was 10 going on. He asked me and Joe about it. So to 11 think he didn't know what was going on, he did 12 know what was going on. He had asked me and Joe 13 about it at the Dallas event, when he brought his 14 father. So you can sit there and keep looking 15 like that to me and, like, blah -- blah -- blah, 16 but that's -- that's what happened. You weren't 17 there, I was. This frustrates the shit out of me.	
11 MR. BENNION: Objection. Vague and 12 ambiguous. Go ahead.		18 How long more do we have? I need 19 a break.	
13 THE WITNESS: Mike was in November of 14 2021.		20 Q I had a couple more questions on this 21 e-mail. We should have been past it four minutes 22 ago.	
15 BY MR. HARVEY:		23 A You know, the sarcasm is not going to 24 get anybody anywhere. I need a break.	
16 Q He was in the hospital November 2021?		25 MR. BENNION: I -- I -- hey, I -- I did	
17 A Pretty much the whole month.			
18 Q Okay. So this -- at least as of March 19 2, 2022, someone was raising allegations that Mr. 20 Holley had wrongfully used Takeover money, correct?			
21 A Yeah, Jason. He was making things up.			
22 Q And before Mr. Deppoleto made his first 23 loan to the company in May 2022, did you tell Mr. 24 Deppoleto about these allegations about Mr. Holley 25 wrongfully using Takeover's money?			
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1 A Number one, not my job to tell 2 Deppoleto anything; it's public information. 3 Number two, he talked directly with Jason. Number 4 three, these were lies.		1 ask for a break about five minutes ago.	
5 Q And again, sir, if you can just stick 6 with my questions, we're going to get out of here 7 a lot more quickly. Before Mr. Deppoleto loaned 8 Takeover the first loan in May 2022, did you tell 9 Mr. Deppoleto about these allegations about Mr. 10 Holley wrongfully using Takeover money?		2 THE WITNESS: Yeah, I heard you. So 3 let's just -- let's take one because I'm --	
11 MR. BENNION: I'm going to state an 12 objection.		4 MR. BENNION: Hey, Toby -- Toby, please 5 don't talk over me or Mr. Harvey. We have court 6 reporters here recording this. Anyway, Patrick 7 you -- you recall I asked for a break eight 8 minutes ago, be held in 10 to 15 minutes, maybe 9 this is a good time.	
13 THE WITNESS: I did not.		10 MR. HARVEY: I had two more questions, 11 so I would like to ask those, and then we can take 12 a break. And if he answers yes or no, we'll be 13 done in 30 seconds.	
14 MR. BENNION: Lacks foundation. Calls 15 for speculation. Go ahead.		14 MR. BENNION: Toby, are you okay? You 15 requested a break. He said two more questions.	
16 THE WITNESS: I did not, but this is 17 public information. Anthony Pettis knew, Josh 18 knew, anybody that --		16 THE WITNESS: Go ahead.	
19 BY MR. HARVEY:		17 BY MR. HARVEY:	
20 Q Okay, sir --		18 Q Before May 2022, when Mr. Deppoleto 19 made the first loan, are you aware of anyone from 20 Takeover disclosing these Holley allegations to 21 Mr. Deppoleto?	
21 A -- invested in this company knew.		22 A Me and Joe spoke to him about it in 23 Dallas, and Jason told him when he came out to 24 Mexico. So yes, he was.	
22 Q -- it was a -- it was a simple yes or 23 no question. It was a simple yes or no --		25 Q When -- when were the -- I don't know	
24 A Yes -- but no -- but you don't want --			
25 you don't want to hear -- you don't want to hear			

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1	the dates of Dallas and Mexico. What -- what 2 dates are you talking about?	1	Q All right. I'm going to show you 2 another exhibit. Well, actually, let me back up. 3 Why didn't you attend that 4 December 21, 2021 meeting?
3	A I couldn't tell you. When his father	5	A Oh, December 21. Oh, when -- when Mike
4	-- him and his father came out, we discussed this	6	was -- I'm sorry. I'm thinking later. I'm
5	briefly.	7	thinking when we took the company over. My fault.
6	Q This was before or after May 2022?	8	It was just me, Joe, and Mike. I mean, me, Joe,
7	A I couldn't -- I don't recall. You'd	9	and Jason.
8	have to look -- you'd have to look at the	10	Q All right. So let me back up.
9	documents. I don't recall.	11	A Yeah. Sorry.
10	Q Okay. So then the answer to my 11 question is, you don't know. I asked you if 12 you're aware of anyone telling him before May 2022 13 about these allegations.	12	Q 12-21 -- 12-21-2021 is the date I'm 13 asking about. December 21, the year of 2021.
14	A I don't.	14	A Yes.
15	Q Your answer is, I don't know, correct?	15	Q Did you attend that board meeting?
16	A I don't recall. Yes. I don't recall.	16	A Yeah. It should have been a Zoom call
17	MR. HARVEY: Okay. Yeah. We can take 18 a break now.	17	or whatever it was. I forget what it was.
19	MR. BENNION: Okay. In 10 minutes?	18	Q Okay. Who else attended that meeting?
20	MR. HARVEY: Sure.	19	A It should have just been me and Joe
21	THE VIDEOGRAPHER: We are going off the 22 record. The time is 9:46 a.m.	20	Pavlik and Jason Tucker.
23	(OFF THE RECORD)	21	Q Were you a board member in December 22 2021?
24	THE VIDEOGRAPHER: We are going back on 25 the record. The time is 10:01 a.m.	23	A Yes.
		24	Q Had you been placed on a leave of 25 absence in September 2021?
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1	MR. BENNION: Is the screen frozen?	1	A No.
2	Hello?	2	Q Around September 2021, were you placed 3 on a leave of absence?
3	THE WITNESS: I'm here.	4	A Would've been '22.
4	MR. BENNION: I can hear you, Toby, but	5	Q 2022? Why were you placed on a leave 6 of absence in 2022?
5	I -- it looks like Patrick's screen is frozen.	7	A For what we've been discussing, the 240
6	THE VIDEOGRAPHER: Counsel, I'm going	8	and the payments that I paid back that Jason made
7	to go off record.	9	up.
8	MR. BENNION: Okay.	10	Q How long were you placed on a leave of 11 absence?
9	THE VIDEOGRAPHER: All right. We are	12	A I was actually gone three weeks. And
10	going off the record. The time is 10:01 a.m.	13	then the Arizona case brought me back probably
11	(OFF THE RECORD)	14	three to four weeks, so a whole month of October.
12	THE VIDEOGRAPHER: We are going back on 13 the record. The time is 10:05 a.m.	15	Q Okay. So at that December 2021
14	BY MR. HARVEY:	16	meeting, did the vote -- did the board vote to
15	Q Mr. McBride, did you attend Takeover's 16 December 21st, 2021 board meeting?	17	remove Mr. Holley from the Takeover board of
17	A I did not.	18	directors?
18	Q Do you know what happened at that board 19 meeting?	19	A Yes.
20	A I do not.	20	Q Did you vote in favor of removal?
21	Q Did you become aware that at some 22 point, the Takeover board of directors voted to 23 remove Mr. Holley from the Takeover board of 24 directors?	21	A Unfortunately, yes.
25	A I'm unaware of any of that.	22	Q Did you say unfortunately or 23 fortunately?
		24	A Unfortunately.
		25	Q And was it a permanent removal or a

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1 temporary?		1 Tucker, including the other folks, via a November	
2 MR. BENNION: I'm going to state an		2 4, 2022 e-mail, but then Mr. Tucker didn't appear.	
3 objection that that may call for speculation		3 Are you certain that Mr. Tucker called this	
4 and/or a legal conclusion.		4 meeting?	
5 Go ahead, Toby.		5 A One second. No, I called. This is --	
6 BY MR. HARVEY:		6 yeah. I called this.	
7 Q If you answered, Mr. McBride, I didn't		7 Q Okay.	
8 hear you.		8 A With Mike and Joe. With Mike and Joe.	
9 A I'm not too sure if it was just		9 Mike --	
10 temporary, or there was no -- there was nothing		10 Q Did you call that --	
11 more to it. So.		11 THE REPORTER: I'm sorry. I didn't	
12 Q There was no deadline by which he was		12 catch the end of that answer.	
13 going to be reinstated? Is that what you're		13 THE WITNESS: Special meeting, Board of	
14 saying?		14 Directors, I guess, for -- one second, Counsel.	
15 A That I'm aware of. Yeah.		15 Okay.	
16 Q Okay. So it was a permanent removal,		16 MR. BENNION: Patrick, can you -- can	
17 correct?		17 you enlarge that at all?	
18 A At -- probably at that time.		18 THE WITNESS: Yeah, I'm trying to --	
19 MR. BENNION: Same -- same objection.		19 MR. HARVEY: Yeah, sure.	
20 Go ahead, Toby. You have to wait		20 THE WITNESS: There we go.	
21 a minute for me. Allow me to -- to object.		21 MR. BENNION: Thank you.	
22 THE WITNESS: At that time, yes.		22 THE WITNESS: Sorry. Now I can see it.	
23 MR. HARVEY: Okay. I'm going to show		23 I'm getting mixed up with the -- the meeting Jason	
24 you another exhibit, which is Exhibit 5.		24 called and the one we called after we -- after I	
25 (EXHIBIT 5 MARKED FOR IDENTIFICATION)		25 got brought back by the judge. Sorry.	
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1 BY MR. HARVEY:		1 BY MR. HARVEY:	
2 Q Are you able to see my screen?		2 Q No problem.	
3 A Yes, sir.		3 A It's all around the same --	
4 Q The top of Exhibit 5, which is Bates		4 Q So I think you were saying --	
5 labeled DEF-1, says, Resolution of Board, sorry,		5 A -- same months.	
6 Resolution of the Board of Directors of Labor		6 Q So I think you were saying you, in	
7 Smart, Inc. And it's describing a November 7,		7 fact, called this meeting; is that correct?	
8 2022 meeting with you, Mr. Holley, and Mr. Pavlik		8 A With Joe and Mike, yeah.	
9 via conference call, correct?		9 Q So you in conjunction with Mr. Holley	
10 A Yes, sir.		10 and Mr. Pavlik were the ones who called this board	
11 Q Do you recognize this document?		11 meeting, correct?	
12 A I haven't seen it in a while.		12 A Yes. If this is the one that removes	
13 Q But you have seen it before?		13 Jason.	
14 A Yes.		14 Q Now, as of the moment before this	
15 Q Okay. And on the last page, which is		15 meeting started, Michael Holley was no longer on	
16 DEF5, is that your signature?		16 the Takeover board of directors, correct?	
17 A Looks like it.		17 A Yes, he was. Because he was taken off	
18 Q And did you, in fact, attend that board		18 -- he wasn't taken off the right way. So he was	
19 meeting on November 7, 2022?		19 still -- my understanding was, by the courts, he	
20 A I believe so.		20 was still part of the board of directors, because	
21 Q Did you call the board meeting?		21 he wasn't taken off the right way.	
22 A No. Jason Tucker did.		22 Q Between the December 2021 meeting where	
23 Q Jason Tucker called this meeting?		23 you and others voted Mr. Holley off of the board	
24 A Yes.		24 and this November 7, 2022 meeting, there's no	
25 Q So this says it was noticed to Jason		25 formal document saying that Mr. Holley was a board	

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<p>1 of director of Takeover during that time frame, 2 correct?</p> <p>3 MR. BENNION: I'm going to state an 4 objection. May call for speculation.</p> <p>5 Go ahead.</p> <p>6 THE WITNESS: I'm not aware of that.</p> <p>7 BY MR. HARVEY:</p> <p>8 Q Did any board members express concerns 9 to you that Mr. Holley was one of the ones calling 10 a board meeting, even though he was no longer an 11 active member of the board?</p> <p>12 A I'm not aware of that.</p> <p>13 Q Did Mr. Tucker express that concern?</p> <p>14 A No. We only served him by emailing to 15 Veronica, so we wouldn't have heard anything.</p> <p>16 Q Did either Mr. Tucker or his counsel 17 express that concern?</p> <p>18 A Not that I recall.</p> <p>19 Q This whereas clause talking about 20 several minutes before the call, go ahead and read 21 that. Let me know when you're done.</p> <p>22 A Go ahead.</p> <p>23 Q Do you remember what Veronica said in 24 her message referred to in that whereas clause?</p> <p>25 A That they weren't going to attend?</p>	<p>160</p> <p>1 have communication with them. It would been done 2 through the attorneys. They tried --</p> <p>3 Q At this board meeting. Did the board 4 -- well, the people that were at the board 5 meeting, did they vote to suspend Michael Costello 6 from his role as CEO of Labor Smart?</p> <p>7 A I don't -- I don't recall that. I 8 could be mistaken. Could have happened, but I 9 don't -- I don't remember.</p> <p>10 Q We go down to DEF-3. The resolved -- 11 second-to-last before the bottom of the page has, 12 Resolved. Michael Costello is suspended from his 13 position as CEO of the company for a period of 30 14 days with pay. And his authority to act on behalf 15 of the company is in all aspects revoked during 16 this period.</p> <p>17 Did I read that right?</p> <p>18 A Yes, sir.</p> <p>19 Q Why was Mr. Costello suspended?</p> <p>20 A He should have never been on the board 21 in the first place, and Jason was using him to -- 22 to sign off on other things. So that's why he was 23 removed. He was never a board member. He was 24 never an advisor. He was -- he was a sales 25 associate.</p>
<p>1 Q Correct.</p> <p>2 A Yes, sir.</p> <p>3 Q Well, did they say anything else about 4 the reasons why they weren't going to attend?</p> <p>5 A My memory, they were caught. And so 6 was she. That's why they didn't attend it.</p> <p>7 Q Caught? What do you mean? What do you 8 mean by that?</p> <p>9 A Caught, meaning Jason's games were 10 unraveled. The -- was -- was unraveling of what 11 he was doing with Veronica, hiding everything, and 12 what he was doing with your client, that we found 13 out everything. That's why he didn't get on this 14 call. Because he was going to be exposed.</p> <p>15 Q And that's what they said to you?</p> <p>16 A That's just what we know as fact. I 17 know Jason Tucker. That's why --</p> <p>18 Q My question was slightly different. 19 What -- what did they say to you?</p> <p>20 A Nobody said anything to me. I didn't 21 respond to them. Ryder (phonetic) and Canini did.</p> <p>22 Q I'm not asking what you said back to 23 them. I'm asking what they reported to you about 24 why they weren't going to be appearing.</p> <p>25 A I -- I don't -- I don't know. I didn't</p>	<p>161</p> <p>163</p> <p>1 Q Well, this is saying he was the CEO, 2 not a board member. Do you disagree with that?</p> <p>3 A That CEO reports to Takeover. Has no 4 power.</p> <p>5 Q The CEO --</p> <p>6 A Labor Smart has no power. Has no vote. 7 Has nothing.</p> <p>8 Q So you're -- so you're telling me that 9 the CEO of Labor Smart reports to Takeover?</p> <p>10 A Yes. Labor Smart has no power in the 11 board of directors.</p> <p>12 Q And this is saying he's the CEO of the 13 company, which is defined up top as Labor Smart, 14 not Takeover. Do you see that? Do you see that?</p> <p>15 A Yeah, I see it.</p> <p>16 Q What did --</p> <p>17 A Go ahead.</p> <p>18 Q What did Mr. Costello do that merited 19 or justified him being suspended from his position 20 as CEO of Labor Smart?</p> <p>21 A He was being advised by Jason, number 22 one, about lies that he was spitting to the rest 23 of my team that were exposed and then they were 24 behind the Dollar General deal and that's why he 25 was let go, when we were told -- they were told</p>

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<p>164</p> <p>1 w'e're not doing the deal.</p> <p>2 Q The Dollar General deal was with</p> <p>3 Takeover, though, not with Labor Smart, correct?</p> <p>4 A Exactly.</p> <p>5 Q So why suspend him as CEO of Labor</p> <p>6 Smart?</p> <p>7 A They're still one. They're still --</p> <p>8 they still coexist with each other, Labor Smart</p> <p>9 and -- it's still -- Labor Smart is the shell,</p> <p>10 Takeover is the -- the way I understand, it's a</p> <p>11 subsidiary of Labor Smart. You'd have to get more</p> <p>12 into the weeds with Mike on that. I'm not the guy</p> <p>13 to be asking that question.</p> <p>14 Q So you defer to Mr. Holley in terms of</p> <p>15 corporate governance between --</p> <p>16 A Yeah.</p> <p>17 Q -- Labor Smart and Takeover?</p> <p>18 A Yeah.</p> <p>19 Q Is that fair?</p> <p>20 A Yes, sir. More of a --</p> <p>21 Q Okay.</p> <p>22 A -- so you can understand it, whereas</p> <p>23 I'm going to combobulate it more. Sorry.</p> <p>24 Q No problem. So then if we look at</p> <p>25 DEF-4, it's referring to -- let's see. The fourth</p>	<p>166</p> <p>1 Q You said Tucker was changing notes?</p> <p>2 A Terms, my bylaws, with the knowledge of</p> <p>3 attorneys that were involved in it, meaning --</p> <p>4 Q I'm just focusing on the notes. You --</p> <p>5 I'm just focusing on the notes. You said that</p> <p>6 Tucker was changing notes. Did I hear you</p> <p>7 correctly?</p> <p>8 A He was changing the terms of the notes.</p> <p>9 Me and Joe had signed the first two, I believe.</p> <p>10 And then there was three or four after that.</p> <p>11 That's where Costello got brought into. Costello</p> <p>12 had no proof of anything. Costello had no power</p> <p>13 to sign anything.</p> <p>14 Q So you said a lot there. I'm trying to</p> <p>15 understand. Are you talking about Mr. Deppoleto's</p> <p>16 notes or other notes?</p> <p>17 A That James Deppoleto was the only note</p> <p>18 we were -- we were dealing with.</p> <p>19 Q And you said you and Mr. Pavlik signed</p> <p>20 off on two previous notes?</p> <p>21 A The first -- or the first two revisions</p> <p>22 we were in agreement with. Anything after that</p> <p>23 things were changed that we found out about.</p> <p>24 That's why the note is in dispute. It's because</p> <p>25 the note was --</p>
<p>165</p> <p>1 resolved from the bottom is referring to a planned</p> <p>2 spinoff of Takeover being suspended for 90 days.</p> <p>3 Do you see that?</p> <p>4 A Yes, sir.</p> <p>5 Q What's the planned spinoff of Takeover?</p> <p>6 What's that referring to?</p> <p>7 A I don't recall.</p> <p>8 Q It also says that Labor Smart was going</p> <p>9 to undertake a review of documents and information</p> <p>10 concerning the transaction. Do you see that?</p> <p>11 A Yes, sir.</p> <p>12 Q Do you know whether Labor Smart in fact</p> <p>13 conducted a review of documents and information</p> <p>14 concerning the transaction?</p> <p>15 A The day that we took over the company,</p> <p>16 we had auditors and accountants going through</p> <p>17 everything, on top of our attorneys. Attorneys,</p> <p>18 meaning Ryder and -- and Mike's lawyer, so.</p> <p>19 Q What did that review -- what did that</p> <p>20 review reveal?</p> <p>21 A That Tucker was taking money, that</p> <p>22 Tucker was forging documents, that Tucker was</p> <p>23 changing notes to benefit Deppoleto, that there</p> <p>24 was -- there was a plethora of -- of things. I</p> <p>25 can't recall everything.</p>	<p>167</p> <p>1 Q Have you -- have you reviewed Mr.</p> <p>2 Holley's deposition testimony as the corporate</p> <p>3 representative for Takeover?</p> <p>4 A No.</p> <p>5 Q Have you spoken to Mr. Holley about his</p> <p>6 deposition testimony as the corporate</p> <p>7 representative for Takeover?</p> <p>8 A No.</p> <p>9 Q As between you and Mr. Holley -- well,</p> <p>10 strike that.</p> <p>11 Taking you back to this document,</p> <p>12 at the end of that review that you were referring</p> <p>13 to, what was Labor Smart's decision regarding the</p> <p>14 planned spinoff?</p> <p>15 A I don't recall.</p> <p>16 Q Was the decision to move forward with</p> <p>17 it?</p> <p>18 A I don't recall. I was basically</p> <p>19 working my way out to separate myself from</p> <p>20 everything.</p> <p>21 Q If you were already doing that, why</p> <p>22 were you voting on these issues at this meeting?</p> <p>23 A Well, this was in the beginning of it.</p> <p>24 When the review was done, it took a couple of</p> <p>25 months to figure all this stuff out.</p>

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1 Q	During this meeting, it was resolved	1 I it would've been done through.	
2 that you would remain on Takeover's board of		2 Q	Are you aware of any officer or
3 directors, correct?		3	director of Takeover seeking Mr. Deppoleto's
4 A I believe so.		4	consent before you were appointed a CEO?
5 Q	Okay. I'm going to take this one down,	5 A Not to my recollection.	
6 show you another one.		6 Q	Are you aware of any lawyer seeking --
7 Are you able to see this document?		7	or any of Takeover's lawyers seeking Mr.
8 A Yeah.		8	Deppoleto's written consent before you were
9 Q	It says, Written Consent, Board of	9	appointed as CEO?
10 Directors of Takeover Industries, Inc., correct?		10 A Not to my recollection.	
11 A Correct.		11 Q	After your reappointment to CEO, did
12 MR. BENNION: Is this Exhibit 6?		12	you have access to Takeover's website?
13 MR. HARVEY: Yes. Thank you for		13 A I never had access to it.	
14 reminding me.		14 Q	At any point after you were reappointed
15 This will be Exhibit 6.		15	as CEO?
16 (EXHIBIT 6 MARKED FOR IDENTIFICATION)		16 A No.	
17 BY MR. HARVEY:		17 Q	Did you take any actions, direct or
18 Q	And this is referring to that November	18	indirect, that would affect what was on the
19 7, 2022 meeting, correct?		19	website?
20 A Yes, sir.		20 A I had no -- I had no access to the	
21 Q	At the bottom of this page, which is	21	website or social media.
22 DEF-11, is that your signature?		22 Q	Who did?
23 A Yes.		23 A I couldn't tell you.	
24 Q	Now, you only signed as to Resolutions	24 Q	After your reappointment, did you
25 1 through 6 and 8, but you abstained from 7,		25	become involved with Takeover's online sales?
	169		171
1 correct?		1 A No. I was too busy fighting Jason	
2 A If that's what it says.		2 Tucker.	
3 Q	Why did you abstain from Resolution 7?	3 Q	After your reappointment as CEO, did
4 A I don't -- I don't recall.		4	you make any public statements to the effect that
5 Q	Okay. At numbered Paragraph 7, It is	5	you were back in control at Takeover?
6 resolved: Toby McBride is reappointed as CEO of		6 A I don't recall.	
7 Takeover and any leave of absence or revocation of		7 Q	Did you tell any of Takeover's
8 his authority to act on Takeover's behalf -- I		8	investors that you were back in control at
9 think that's supposed to be is, not his, thereby		9	Takeover?
10 terminated; is that right? Did I read that right?		10 A I would've never said I was in control	
11 A I believe that's what it says.		11	of Takeover. It would've been me, Joe, and Mike
12 Q	So you were reappointed as CEO of	12	got the company back from Jason.
13 Takeover, correct?		13 Q	Who solicited Mr. Deppoleto's first
14 A Yes.		14	loan to Takeover?
15 Q	Did Mr. Deppoleto provide written	15 A Soliciting? You mean brought him in?	
16 consent before you were reappointed as CEO?		16 Q	Asked him to give the loan?
17 A I don't recall.		17 A James had called me two or three times	
18 Q	Did you ever seek Mr. Deppoleto's	18	after I met Anthony and Josh in Florida the first
19 written consent before you were reappointed as CEO?		19	time. And then, like I said, I didn't know him --
20 A I don't recall. That would've had to		20 Q	Were you the first --
21 come from our attorneys. We had no conversation --		21 A -- when I met him.	
22 Q	Are you aware of any -- I'm sorry. Go	22 Q	Go ahead. I'm sorry. I thought you
23 ahead.		23	were done.
24 A We had no communication with him. He		24 A I said that I didn't know who he was	
25 did everything through the lawyers, so that's who		25	until I met him. I thought he was just some buddy

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1 of -- of Anthony's and Josh's and had no idea who		1 A Probably two weeks after I got back is	
2 he was. Nice guy. I talked to him on the phone,		2 when I knew he wanted to come in and I believe it	
3 but I never solicited him for money.		3 was 400 was his first. I could be wrong, but --	
4 Q So it's your --		4 Q Two weeks after you got back, what --	
5 A I never asked him for money. I never		5 help me with the time frame. When -- what does	
6 -- it got brought to me.		6 that mean?	
7 Q So it's your testimony that, out of the		7 A That means discussions were, you know,	
8 people affiliated with Takeover, you had the first		8 hey, do we want to do this? Let's get paperwork	
9 contact with Mr. Deppoleto about any sort of loan		9 moving and --	
10 or investment. Is that what you're telling me?		10 Q Got back from where, and when was that	
11 A It would've been Jason and then it		11 trip is a better to ask it?	
12 would've been -- then I chatted with him after		12 A I -- I got back from Fort Lauderdale	
13 that, but it was more -- more --		13 when we first got involved with the PFL. They	
14 Q Mr. Tucker?		14 brought me and Trevor out to -- I forget. The	
15 A -- more personal than -- I never got		15 hotel with the guitar on it is where they had	
16 into money conversations. It was just him getting		16 their first thing at so we could see what was	
17 19 to know me and Joe, feel more comfortable about		17 17 going on. I believe it was late -- was it when	
18 what he was getting into. And it wasn't for that		18 18 Mike was in the -- I think it was before Mike went	
19 much money. It was for four. I never came after		19 19 in the hospital. So it could have been August of	
20 him for a million or four. I -- he wanted to come		20 '21. Yeah, it could have been then. Yeah. It	
21 in and be an exclusive and I was against it.		21 21 probably was August of '21. I'm not too sure,	
22 Like, no, we don't just want one person so -- but		22 Patrick.	
23 he was a nice guy. We met in Dallas with him and		23 Q So it -- roughly speaking, it was two	
24 his father, like I said, and it was more personal.		24 weeks after this trip to Fort Lauderdale, and you	
25 We didn't talk money. Not that I recall. I knew		25 understood that Mr. Deppoleto was talking to Mr.	
	173		175
1 --		1 Tucker about a potential loan and you heard about	
2 Q So Mr. Tucker was the first one?		2 it from Mr. Tucker; is that fair?	
3 A Yes. I would've pushed everything --		3 A James had called me once or twice just	
4 Q Mr. Tucker --		4 to talk because I didn't know who he was. I just	
5 A -- on Jason and Mike at that time.		5 knew he was attached to Anthony somehow, so I was	
6 Q We're talking over each other. I just		6 okay with it. Because we wanted to just let	
7 want to make the -- sure the record is clear. So		7 certain people in. We didn't want a lot of people	
8 Mr. Tucker was the first person from Takeover to		8 involved. I think you could understand that. So,	
9 solicit Mr. Deppoleto when it came to loans; is		9 even Anthony --	
10 that correct?		10 Q Why did Takeover -- why did Takeover	
11 A If he wanted -- if he wanted to invest,		11 solicit Mr. Deppoleto's loan?	
12 yes. It wouldn't have been me.		12 A The way I understand it, he wanted to	
13 Q Do you know when those discussions		13 come in because Anthony was coming in. Anthony	
14 between Mr. Deppoleto and Mr. Tucker began?		14 had already owned shares of LTNC and the stock was	
15 A Immediately after I got back from		15 climbing, climbing, climbing, so Anthony had no	
16 Florida the first time.		16 idea it was me behind it until he saw me at the	
17 Q Okay. I thought you said you didn't		17 fight.	
18 talk about money with Mr. Deppoleto?		18 Q How did Takeover use the first 1.5	
19 A I don't -- I don't talk money with		19 million in funds that Mr. Deppoleto provided?	
20 anybody, with -- with investors. I have them talk		20 A I couldn't tell you. I never saw that	
21 to Mike or -- or Jason.		21 money. I -- I know where I think it went now. It	
22 Q Okay. And so the answer very well		22 went to making the shots that we were against the	
23 could be you don't know, but when did discussions		23 Dollar General, which we'd have never done that	
24 between Takeover and Mr. Deppoleto begin about a		24 deal. I'd have never spent 1.5. It's absolutely	
25 potential loan?		25 -- makes me throw up.	

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1 Q	Were any of Mr. Deppoleto's funds used	1 you want to see them.	
2 for salaries?		2 A Yeah.	
3 A No. There was money in the bank to	make our payroll. That's ridiculous.	3 Q But the first three notes totals 1	
4		4 point something --	
5 Q	If there was, why were you getting	5 A No, I believe you. I--	
6 inconsistent payroll payments?		6 THE REPORTER: I'm sorry. I'm sorry.	
7 A We would wait for money to come in and	I'd make sure my -- our guys were taken care of	7 One at a time.	
8	before I was.	8 THE WITNESS: I believe you, Patrick.	
9		9 BY MR. HARVEY:	
10 Q	Well, I thought you said you had money	10 Q Okay. So set aside the 1.5 million for	
11 in the bank already.		11 those first three notes, I'm -- I'm -- for	
12 A Yeah. But when you're running a	beverage company or company, it -- it -- it -- it	12 purposes of this question or this line of	
13	could go all in within a week or two and then, you	13 questioning, I'm asking you a slightly different	
14	know, POs come right back in again. So it's not	14 one. Setting aside the 1.5 million that was	
15	nothing's ever real consistent.	15 documented in those first three notes, you're	
16		16 aware that Mr. Deppoleto is alleging that he also	
17 Q	So is it your testimony that none of	17 loaned an additional 500,000, which would bring	
18 Mr. Deppoleto's loans were used for salary for		18 the total to a little over 2 million in	
19 yourself?		19 supplemental loans, correct?	
20 A Not that I'm aware of. I had no access	to the bank account.	20 A All I remember is the first one that	
21		21 was smaller. The four to three to five, whatever	
22 Q	So if it was used for salary, you	22 that was. That was his first one. Anything after	
23 wouldn't know because you didn't have access to		23 that would have been Jason. I wouldn't have known	
24 the bank account; is that fair?		24 --	
25 A Exactly. Jason Tucker was the only		25 Q And maybe I'm -- maybe I'm not being	
	177		179
1 access to the bank account.		1 clear here. Did you read the complaint in this	
2 Q	And so you don't know how those funds	2 case?	
3 were spent at all, fair?		3 A Yeah.	
4 A Fair.		4 Q And you understand that Mr. Deppoleto's	
5 Q	Okay. Just one second. I want to look	5 damages claim is for a little over 2 million,	
6 at one thing. You're aware that in addition to		6 correct?	
7 the 1.5 million in loans that Mr. Deppoleto		7 A Yes.	
8 provided via the notes, Mr. Deppoleto is also		8 Q You got to say yes or no.	
9 alleging that he provided about 500,000 more than		9 A Yes, sir. Sorry.	
10 that in supplemental loans that were not		10 Q And -- and out of that a little more	
11 documented via the same type of note as the first		11 than 2 million, 1.5 million is related to three	
12 three loans. Are you -- you're aware of that?		12 separate written notes, correct?	
13 A I believe his first note with -- with	us is what I just told you about, was between four	13 A Okay. I believe so. I-- I--	
14	and whatever it was. I -- I don't know the exact	14 Q So set those --	
15	number. But Jason would've handled all that.	15 A -- believe what you're saying.	
16		16 Q Set those three notes aside for the	
17 Q	And I -- yeah. And I'm -- I'm putting	17 moment. I want to focus on that additional	
18 the notes aside and I -- I had four or five pages		18 500,000, that would put the total up to over 2	
19 of questions about those notes and I was going to		19 million. Are we on the same page?	
20 show them to you, but I thought you'd --		20 A Okay.	
21 A I'm not going to --		21 Q Okay. Mr. Deppoleto loaned Takeover	
22 Q	-- appreciate it.	22 386,000 and change in October 2022, correct?	
23 A Sorry.		23 MR. BENNION: I'm going to object to	
24 Q	Okay. So, yeah, I'm putting the notes	24 the form of the question. Lacks foundation.	
25 to the side. I'll just represent to you unless		25 Calls for speculation. May call for a legal	

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1 conclusion. Go ahead, Toby.		1 BY MR. HARVEY:	
2 THE WITNESS: I don't recall. I had no		2 Q A shot company?	
3 access, Patrick, to the account or seeing things		3 A They make stuff for -- they make, like,	
4 come in, or how bills were paid out by whoever.		4 sites that --	
5 You know, I had no access to it.		5 Q Displays?	
6 BY MR. HARVEY:		6 A There you go.	
7 Q You were the CEO of Takeover in October		7 THE REPORTER: I -- I missed what you	
8 2022, correct?		8 had said.	
9 A Yep.		9 BY MR. HARVEY:	
10 Q You don't know whether Mr. Deppoleto		10 Q Is that --	
11 provided --		11 THE REPORTER: What they --	
12 A Well, no, I wasn't. No, I was not. I		12 MR. HARVEY: I'm sorry.	
13 was suspended.		13 THE REPORTER: I missed what -- what	
14 Q Okay.		14 they make.	
15 A Sorry.		15 THE WITNESS: I believe that's who they	
16 Q No problem. Were you still suspended		16 are, Patrick. I can't tell you right now.	
17 -- well, give me one moment here. I want to make		17 THE REPORTER: No. I -- I'm just	
18 sure the date that I'm asking you about is		18 saying I missed what Patrick --	
19 correct. Were you still suspended as of November		19 MR. HARVEY: For the court reporter.	
20 4th, 2022?		20 THE REPORTER: Yeah.	
21 A Yes, sir.		21 MR. HARVEY: Yeah. Yeah. I'll -- I'll	
22 Q Okay. And when you say suspended, were		22 clear it up. I'll clear it up.	
23 you just suspended as your role as CEO or were you		23 BY MR. HARVEY:	
24 totally out of the company while you were on		24 Q For the court reporter's benefit, you	
25 suspension?		25 think Great Northern Corp. makes displays?	
	181		183
1 A I had no access to my employees or		1 A I believe that's who they are. They --	
2 anything.		2 they bring the shots in, they fill the shots, they	
3 Q Okay.		3 make the displays, they send them out. That's	
4 A Just my attorney.		4 what we -- I believe that's what we found out.	
5 Q Okay. So if money from Mr. Deppoleto		5 Q Okay. And so Great Northern Corp. was	
6 came in -- well, and I know the answer to this,		6 a company that Takeover did business with, correct?	
7 but let me make sure it's clear in the transcript		7 A Not to my knowledge. We didn't find	
8 -- during October -- well, strike that.		8 this out till I came back. I had no knowledge --	
9 So if Mr. Deppoleto was asked to		9 Q When you say we didn't find this out?	
10 provide supplemental loans totaling a little over		10 A I had no knowledge of it.	
11 500,000 between October 22 and November 4, 2022,		11 Q So Takeover did business with Great	
12 because you were frozen onto the company, you		12 Northern Corp., you just didn't find out about	
13 would have no way of knowing whether he was, in		13 that until after the fact, is that what you're	
14 fact, asked to provide loans in that dollar		14 saying?	
15 amount, correct?		15 A Well, Jason Tucker --	
16 A Correct. I'm sure.		16 MR. BENNION: Objection. Objection.	
17 Q Okay. Are you familiar with a company		17 Calls for a legal conclusion. Go ahead, Toby.	
18 called Great Northern Corp. or Corporation based		18 THE WITNESS: Jason Tucker did business	
19 out of Appleton?		19 with as Takeover with Great Northern with nobody	
20 A Great Northern. Great Northern. Great		20 else knowing about it, but him.	
21 Northern.		21 BY MR. HARVEY:	
22 MR. BENNION: Appleton, Wisconsin.		22 Q Okay.	
23 THE WITNESS: That's -- that sounds		23 A No board -- no board consent, no board	
24 like a -- that sounds like a shot company, or --		24 of directors. Anything -- just let me be clear.	
25 or -- or --		25 Anything that at that kind of level would've had	

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1 to have me, Joe, and Jason vote on. Plain and 2 simple. Especially that kind of money moving 3 around, anything over 20 grand, it -- you had to 4 have authorization to do -- all that stuff had to 5 have -- we voted on. There was no one guy making 6 a call. That's why Jason got us pushed out so he 7 could go try to get this deal done and spend 8 Deppoleto's money on stupid shit. We would've -- 9 I would've never spent James's money on that. I 10 would've never even asked him for the money to do 11 that. It's absolutely insane. I feel bad. Is he 12 owed it back? Of course he is. Of course, he is. 13 Q You -- but again, you were suspended 14 from the company in October '22 and early part of 15 November '22, so you wouldn't have been voting on 16 anything during that time frame, correct? 17 A So, well, if I'd have found out about 18 it, it would've been squashed so James would've 19 never lost his money because the money would have 20 never -- we would have never -- he would have 21 never been in this position. All he had to do -- 22 all he had to do was talk to me. 23 Q Again -- again, I'm -- I'm asking a 24 simpler question than the one you're answering. 25 You were suspended in October 22 and through		1 then tried setting up meetings after that, and I 2 started getting the emails on my private e-mail. 3 Q Again, I -- I was asking a much -- I 4 was asking a much simpler question. You don't 5 know what anyone from Takeover was telling Mr. 6 Deppoleto in the October '22 through November 4, 7 2022 time frame, correct? 8 A No. No. 9 Q That's incorrect -- 10 A No. 11 Q -- or did we have a double negative? 12 A No, I don't -- I don't know what they 13 were telling him, what Jason was telling him. It 14 would've just been Jason. 15 Q Okay. Do you know what those 16 supplemental loans were used for? 17 A I couldn't tell you. I know what we 18 found -- 19 Q I'll show you another Exhibit -- 20 A -- I know what we found out, that what 21 they had to pay for. 22 Q I'm going to show you another exhibit. 23 One second. Okay. Are you able to see my screen? 24 A Yeah. 25 MR. HARVEY: This is November 8th.	
1 November 20 -- November 4, 2022, correct? 2 A Yeah. Like, late -- late -- last week 3 September all the way through first, second week 4 of November. 5 Q And so during that time frame, you 6 would not have been voting on anything for 7 Takeover, correct? 8 A No, but Joe Pavlik would've been 9 involved and Joe knew nothing either. 10 Q Okay. And since you were suspended, 11 you don't know what anyone from Takeover said to 12 Mr. Deppoleto in that October '22 through November 13 4, '22 time frame, correct? 14 A No. Jason gave me a call when they -- 15 I was supposed to be at NXT that year, which is 16 the convenience show in Vegas, which is the 17 biggest one. I believe it's the second week of 18 October. And that's what he suspended me for -- 19 before it so I couldn't go to it, so they could 20 sit down with 5-hour. Because if I had have found 21 out about it, I would have squashed it. So I 22 didn't know any of this until after I got back. 23 But he did call me from NXT. Deppoleto showed up 24 at that event. They tried meeting with Jeff 25 Sigouin from 5-hour, who I know very well, and	185		187
		1 Oh, and by the way, this is 2 Exhibit 7, I believe. 3 (EXHIBIT 7 MARKED FOR IDENTIFICATION) 4 THE REPORTER: Yes. 5 BY MR. HARVEY: 6 Q Thank you. So November 8th, 2022 7 letter from Husch Blackwell to a number of people, 8 and it says, Notice of Default Demand for Payment 9 and Cease and Desist. Do you see that? 10 A Yes, sir. 11 Q Do you recognize this document? 12 A I've seen it before. 13 Q What was your reaction to receiving 14 that notice? 15 A I pushed everything to the attorneys. 16 Q Okay. Did you discuss the notice with 17 anyone after you received it? 18 A I don't recall. 19 Q You don't remember any discussions with 20 Mr. Holley and Mr. Pavlik? Anyone? 21 A I'm assuming we had phone calls with 22 our Counsel, and we let them deal with -- 23 Q Was anyone else -- was anyone else on 24 the calls other than -- 25 A No.	

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1	Q -- if I'm hearing you correctly?	1	MR. BENNION: Same objection.
2	A It would've just been me, Joe, Mike	2	THE WITNESS: I have no knowledge.
3	Ghini, and Jennifer.	3	BY MR. HARVEY:
4	Q And no one other than the people you	4	Q Does Takeover intend to repay Mr.
5	just named was on the -- were -- were on those	5	Deppoleto?
6	calls; is that right?	6	A While I was --
7	A I don't believe so.	7	MR. BENNION: Objection. Lacks
8	Q You understood that what this notice	8	foundation. Vague and ambiguous.
9	Mr. Deppoleto is providing notice to Takeover that	9	Go ahead.
10	it defaulted on Mr. Deppoleto's loans, correct?	10	THE WITNESS: While I was there; you
11	A Yes.	11	bet your ass. Yes, sir.
12	MR. BENNION: Sustain an objection to	12	BY MR. HARVEY:
13	the extent it may call for a legal conclusion.	13	Q Okay. Let me show you another document
14	Go ahead, Toby.	14	now. Are you able to see my screen?
15	THE WITNESS: That's what it appears to	15	A Yes, sir.
16	be.	16	MR. HARVEY: This will be Exhibit
17	BY MR. HARVEY:	17	Number 8.
18	Q You agree that Takeover defaulted on	18	(EXHIBIT 8 MARKED FOR IDENTIFICATION)
19	its obligations to Mr. Deppoleto?	19	BY MR. HARVEY:
20	MR. BENNION: Same objection. May call	20	Q And this is a letter from Husch
21	for a legal conclusion.	21	Blackwell dated November '22. Looks like to the
22	Go ahead.	22	same recipients of the letter or as the recipients
23	THE WITNESS: No, I do not. I don't	23	from Exhibit 7.
24	believe Takeover defaulted.	24	A Right.
25	BY MR. HARVEY:	25	Q And this one's subject to second notice
	189		191
1	Q Upon receiving this notice, did	1	of default and demand for payment, correct?
2	Takeover begin a process to repay Mr. Deppoleto's	2	A Yes.
3	loans?	3	Q Have you seen this document before?
4	A He was contacted right when we took the	4	A Briefly. Yes.
5	company back over to try to negotiate it. He	5	Q And it is a second notice of default in
6	didn't want nothing to do with it. He wanted to	6	Mr. Deppoleto demanding payment a second time,
7	stick by Jason's side.	7	correct?
8	Q Well, negotiation's one thing, but I'm	8	A That's what it says.
9	asking, was there an official process to start	9	Q After you received this notice, did you
10	repaying him?	10	discuss it with anyone?
11	A I don't recall.	11	A Same as before.
12	MR. BENNION: Objection. May call for	12	Q Meaning you did with Mr. Holley, Mr.
13	speculation. May call for legal conclusion.	13	Pavlik, and your Counsel?
14	Go ahead, Toby.	14	A Yes, sir.
15	THE WITNESS: Yeah. I don't recall.	15	Q Was anyone else involved in those
16	BY MR. HARVEY:	16	discussions?
17	Q Did Takeover begin a process to cure	17	A Not that I'm aware of.
18	its default?	18	Q For instance, was Mr. Zarro involved in
19	A I don't --	19	those discussions?
20	MR. BENNION: Same -- same objection.	20	A Not that I'm aware of.
21	Go ahead, Toby.	21	Q And other than that joint, was it a
22	THE WITNESS: I don't recall.	22	phone call, or was it several calls? What was it?
23	BY MR. HARVEY:	23	A I believe Zooms, Mr. Harvey.
24	Q To date, has Takeover repaid any amount	24	Q Zooms plural, or just one Zoom.
25	of the funds that Mr. Deppoleto loan to Takeover?	25	A There might have been one for the first

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	192		194
1 one and one for this one.		1 A Yeah. We're filing counters, so that's	
2 Q Okay. And other than that, you didn't		2 eventually going to get thrown out pretty quick.	
3 discuss this notice with any other individual		3 MR. HARVEY: I'm going to show you	
4 after that Zoom, or Zooms?		4 another document, which will be Exhibit 9.	
5 A Not that I'm aware of.		5 (EXHIBIT 9 MARKED FOR IDENTIFICATION)	
6 Q After receiving this notice, did		6 BY MR. HARVEY:	
7 Takeover begin a process to repay Mr. Deppoleto's		7 Q You're able to see my screen?	
8 loans?		8 A Yes, sir.	
9 A Not that I'm aware of.		9 Q And this is the verified complaint in	
10 Q Why not?		10 the Arizona case, correct?	
11 A I -- I don't recall. I'd have to ask		11 A I believe so.	
12 the attorneys.		12 Q And if we look at the file stamp date,	
13 Q We briefly touched on this a little bit		13 it tells us it was filed on March 8th, 2022,	
14 before, but now I'm asking a little bit broader		14 correct?	
15 question. Has Takeover ever considered a spin out		15 A Yes.	
16 or a spinoff?		16 Q Now, you were still the CEO of Takeover	
17 A Not that I'm aware of.		17 as of March 8th, 2022, correct?	
18 MR. BENNION: Objection. That's vague		18 A Yes.	
19 and ambiguous.		19 Q Did you review this complaint before it	
20 BY MR. HARVEY:		20 was filed?	
21 Q Has Takeover ever considered trying to		21 A I don't believe so.	
22 go public?		22 Q Did you provide any information that	
23 A Well, it's already public. Takeover is		23 was used in the complaint?	
24 -- it's already a public company. You mean, go		24 A I don't believe so. This is all Jason	
25 private?		25 Tucker.	
	193		195
1 Q Your understanding is that Takeover is		1 Q Who approved filing the complaint.	
2 a publicly traded company?		2 A Jason Tucker did. This is all Jason	
3 A Well, it's through LTNC. It's one of		3 Tucker.	
4 the same. Like I said, you'd have to get more in		4 Q Did he discuss it with you before it	
5 the -- the weeds with Mike. Mike can explain		5 was filed?	
6 these more to you than I can. LTNC and Takeover.		6 A I didn't want to file anything.	
7 Q Okay. And -- and that's fair. You		7 Q So he did discuss it with you --	
8 defer to Mr. Holley when it comes to questions		8 A Probably, it was --	
9 about whether Takeover was public versus Labor		9 Q -- before it was filed?	
10 Smart being public, that type of thing?		10 A Yeah.	
11 A Yeah. Just there's levels to it. So		11 Q Okay. Before Mr. Deppoleto's first	
12 he can explain it better than I can.		12 loan on May 25th, 2022, did you ever tell Mr.	
13 Q Okay. To your knowledge, did anyone		13 Deppoleto about the Arizona litigation?	
14 from Takeover ever discuss with Mr. Deppoleto		14 A As I've said before, we had a brief	
15 spinning out Takeover or having Takeover go public?		15 conversation when we were in Dallas, but this was	
16 A No, sir.		16 public information.	
17 Q Now, you're aware of the lawsuit that		17 Q And when was this -- you -- you keep	
18 Takeover filed against Michael Holley in the		18 referencing this Dallas -- Dallas trip. When was	
19 District of Arizona, correct?		19 this Dallas trip?	
20 A I'm aware of it. Yeah.		20 A May. June.	
21 Q And after the initial lawsuit was		21 Q And this complaint was filed on March	
22 filed, you were added as a third party defendant,		22 8th, 2022, so that would've been after? The	
23 correct?		23 Dallas trip would've been after, correct?	
24 A I believe so.		24 A Yeah.	
25 Q And that case is still pending, correct?		25 Q Okay. So my question was, before May	

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	196		198
1	25th, 2022, did you -- did you personally tell Mr.	1	A Yeah.
2	Deppoleto about the Arizona litigation?	2	Q In terms of who made the decision to
3	A No.	3	authorize the dismissal in February 2023, do you
4	Q Are you aware of anyone else from	4	know who from Takeover made that decision?
5	Takeover notifying Mr. Deppoleto about the Arizona	5	A It would have been the board of
6	litigation before May 25th, 2022?	6	directors.
7	A No. Just Jason Tucker.	7	Q And you're saying would have had to
8	Q And do you know for a fact that he told	8	have been because you're -- you're assuming that
9	Mr. Deppoleto about this lawsuit before May 25?	9	you don't actually know though; is that fair?
10	A Jason was in constant contact with	10	A Yeah. Yeah. Yes, sir.
11	Deppoleto. So I would -- I would 99 percent	11	MR. BENNION: I'm going to state a
12	guarantee that happened.	12	belated objection. Calls for speculation. Lacks
13	Q But you don't personally know that?	13	foundation.
14	A No.	14	Go -- go ahead, Patrick.
15	Q You never heard Mr. Tucker?	15	BY MR. HARVEY:
16	A No, sir.	16	Q And I think I know the answer to this,
17	Q We're -- we're talking over each other.	17	but I have to ask anyways. Why did Takeover
18	Let me make sure the question or the transcript's	18	decide to dismiss all the claims against the
19	clear. You don't personally know for a fact that	19	Holleys?
20	Mr. Deppoleto, or I'm sorry, Mr. Tucker told Mr.	20	A I have no --
21	Deppoleto about the lawsuit in Arizona before May	21	MR. BENNION: Same -- same objection.
22	25th, 2022, correct?	22	BY MR. HARVEY:
23	A No, sir.	23	Q I'm sorry. You -- you were talking
24	Q I think we had a double negative there.	24	over your attorney. What was your answer?
25	Do you have personal knowledge of Mr. Tucker	25	A I have no -- I -- I have no knowledge
	197		199
1	telling Mr. Deppoleto about the Arizona litigation	1	of that.
2	before May 25th, 2022?	2	Q Okay. Do you know whether anyone at
3	A No, sir.	3	Takeover sought Mr. Deppoleto's consent to dismiss
4	Q Okay. To your knowledge, did take over	4	all the claims against the Holleys before they
5	file a stipulation to dismiss all the claims	5	were dismissed?
6	against Michael Holley and his wife in February	6	A I have no knowledge of that.
7	2023?	7	Q To your knowledge, has Takeover ever
8	A I believe so.	8	maintained directors and officers liability
9	Q Do you know who at Takeover made the	9	insurance?
10	decision to dismiss the claims against the Holleys?	10	A I believe we have, but I'm not
11	A I believe it was me, Joe, me, Joe	11	confident.
12	Pavlik, and -- and our attorney, because they were	12	Q What period of time do you believe
13	false claims.	13	Takeover had D&O insurance?
14	Q Now, I thought you told me that you --	14	A I couldn't tell you.
15	A Yeah.	15	Q Do you know what the liability limits
16	Q I thought you told me you left Takeover	16	were?
17	in January 2023. Is that -- did I misunderstand	17	A I know what it was on the product. It
18	you earlier?	18	had to be over a million, so.
19	A Oh, yeah. But that would have -- that	19	Q Did you say if it was on a product?
20	would have been -- that would have been whoever's	20	A We had to have liability insurance on
21	there now.	21	product when we went to a distributor or retailer.
22	Q Okay. So --	22	So it would have to be \$1,000,000 at least, I
23	A Sorry.	23	believe. It's a standard --
24	-- let me make sure I've got it. Let	24	Q Oh, you're talking about -- you're
25	me make sure I've got it clear.	25	talking about product liability insurance. I was

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	200		202
1 asking --		1 A Yes.	
2 A Yeah.		2 Q And that's as of December 31, 2022,	
3 Q -- a slightly different question.		3 according to the top, correct?	
4 Directors' and officers' liability insurance. So		4 A Okay.	
5 --		5 Q And then if we go down to Row 85, it	
6 A More of a Mike --		6 says, Total Liabilities for Takeover	
7 Q -- insurance that would cover the board		7 \$3,923,492.91, correct?	
8 of directors --		8 A Correct.	
9 A Yeah, more of a --		9 Q So at least as of that date, we would	
10 Q -- stuff like that.		10 agree that Takeover's liabilities exceeded its	
11 A More of a --		11 assets, correct?	
12 MR. BENNION: I'm -- I'm -- I'm going		12 A Okay. It's a beverage company. It's --	
13 to state an -- an objection that this may call for		13 Q By --	
14 speculation for Mr. McBride. Go ahead, Toby		14 A Go ahead.	
15 THE WITNESS: More of a Mike question.		15 Q By about a factor of 10, correct?	
16 BY MR. HARVEY:		16 THE REPORTER: I'm sorry. I didn't --	
17 Q Okay. Fair enough. You don't happen		17 I-- I didn't catch your last answer.	
18 to know who the carrier was if you did have it --		18 MR. BENNION: Toby?	
19 A No, sir.		19 THE WITNESS: Go ahead. Say it again.	
20 Q -- do you?		20 BY MR. HARVEY:	
21 A No, sir.		21 Q I'll ask again. I -- I caught it, but	
22 MR. HARVEY: Okay. I'm going to show		22 I'll ask again so the court reporter can get it.	
23 you another exhibit now.		23 So you'd agree with me that at least as of	
24 Oh, by the way, Counsel, so this		24 December 31, 2022 Takeover's liabilities exceeded	
25 will -- well, this will be Exhibit Number 10. I'm		25 its assets because the liabilities are 3.9 million	
	201		203
1 going to show it to you.		1 and the assets are 329,000, correct?	
2 (EXHIBIT 10 MARKED FOR IDENTIFICATION)		2 A Correct. But it's also a beverage	
3 MR. HARVEY: Yesterday -- this is a		3 company. That's what's going to happen. This	
4 spreadsheet that is labeled Takeover Industries		4 happens in beverage companies all the time.	
5 Balance Sheet as of December 31, 2022. Counsel,		5 Q And the liabilities were factor of	
6 yesterday you were asking me if I had the Bates		6 about 10 greater than its -- or exceeded the	
7 number for it. It looks like it's DEF-338.		7 assets by a factor of about 10; is that correct?	
8 MR. BENNION: Thank you very much.		8 A Basically.	
9 MR. HARVEY: No problem.		9 Q Okay. And then if we go to Row 61 of	
10 BY MR. HARVEY:		10 Takeover's balance sheet, as of December 31, 2022,	
11 Q Mr. McBride, I'm showing you Exhibit		11 it's showing liabilities to James Deppolo in the	
12 Number 10, which as I said is Bates-labeled		12 amount of \$2,016,697, correct?	
13 DEF-338. It's a spreadsheet called Takeover		13 A That's what it says.	
14 Industries Inc. Balance Sheet as of December 31,		14 Q Okay. Make this one down. Give me	
15 2022. Have you seen this document before?		15 just one second. I'm making a couple notes that I	
16 A I have not.		16 think is going to make this go a little quicker.	
17 Q Okay. And I was asking you some		17 MR. BENNION: Sure. I'm going to	
18 questions earlier about when Takeover's		18 stretch my legs. I can hear you. I'm just	
19 liabilities exceeded its assets. Do you remember		19 walking in my office.	
20 those questions?		20 MR. HARVEY: Okay.	
21 A Yeah.		21 THE WITNESS: Hopefully, we're -- get	
22 Q Just to try and orient ourselves a		22 this done sooner.	
23 little bit better, I'll be brief with this, if we		23 BY MR. HARVEY:	
24 go down to Row 36 of the spreadsheet. It says,		24 Q You mentioned -- it was probably about	
25 Total Assets, 329,000 and change, correct?		25 15, 20 minutes ago, you mentioned that you think	

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	204		206
1	that there were revised copies of the notes. Do	1	Q Have you had any interaction whatsoever
2	you remember saying that a few minutes ago? 15	2	with Next Gen or any other Labor Smart affiliate
3	minutes ago, maybe?	3	or subsidiary since --
4	A Yes, sir.	4	A I left?
5	Q Do you have copies of the drafts or	5	Q Yeah, sure.
6	revised versions of the notes?	6	A No. No.
7	A I don't have Takeover e-mail anymore.	7	Q Okay. There was a time when you and
8	I have no access to any of that anymore. I know	8	Mr. Holley were personally taking a percentage of
9	that they were -- they were in the Arizona case,	9	the investments that Takeover received from
10	so you could go to there and find everything.	10	investors, correct?
11	They're definitely in that.	11	MR. BENNION: I'm going to state an
12	Q Who provided them in that case?	12	objection. Calls for a legal conclusion. Lacks
13	A We did because we found them in -- in	13	foundation. May call for speculation. Go ahead.
14	Tucker's emails. And Veronica's.	14	THE WITNESS: Not that I'm aware of.
15	Q Have you heard of a company called	15	BY MR. HARVEY:
16	Illumination Holdings, Inc.?	16	Q If Mr. Holley testified to that effect,
17	A I have no idea who that is.	17	would you disagree with him?
18	Q How about Illumination Brands, Inc. Do	18	A No.
19	you know who that is?	19	Q And did you ever disclose to investors
20	A I have no idea who that is.	20	that that was going on?
21	Q Let's go off the record for just 30	21	MR. BENNION: Same objection.
22	seconds. I want to talk to your counsel for one	22	THE WITNESS: I'm not aware.
23	second.	23	BY MR. HARVEY:
24	THE VIDEOGRAPHER: We are going off the	24	Q And I may have asked you this and --
25	record. The time is 11:06 a.m.	25	when I first was taking your deposition last
	205		207
1	(OFF THE RECORD)	1	Friday, but just to make sure before I let you go,
2	THE VIDEOGRAPHER: We are going back on	2	when Labor Smart purchased Takeover, what was the
3	the record. The time is 11:09 a.m.	3	purchase price?
4	BY MR. HARVEY:	4	A That's going to be more of a Mike
5	Q Mr. McBride, have you ever heard of a	5	question. I know -- I believe Ryan put in just
6	company called Illumination Brands, Inc.?	6	under a million, but it was -- it was bled in,
7	A I have not.	7	like, 200 here, 500 there because we had to clean
8	Q Do you know an individual named Brad	8	it up. There was things that we found out about
9	Wyatt, W-Y-A-T-T?	9	that we had to clean up that cost us money. So --
10	A Why does the name sound familiar to me?	10	so it was just under a million, Patrick.
11	Name sounds familiar, but I can't place it.	11	Q You're talking --
12	Q Okay. How about someone named Mike	12	A Ryan Schadel.
13	Ghini? And I'm not sure I'm -- or I'm not sure	13	Q You're talking about Ryan Schadel
14	I'm spelling it right, but it might be G-H-I-N-I.	14	putting in about \$1,000,000 into Takeover?
15	Do you know a Mike Ghini?	15	A And to LTNC to get it cleaned -- to get
16	A No, no. And Wyatt might be another	16	us going with -- with Takeover being the
17	person's last name that I know too, so --	17	subsidiary of that.
18	Q Okay. And I think I know the answer to	18	Q So money, he -- some of the money he
19	this because of your previous answers, but do you	19	put into Labor Smart, which was then passed down
20	know what the distinction is being Next Gen	20	to Takeover. Is that what you're saying?
21	Beverages, LLC, and NextGen Holdings?	21	A More of a Mike question.
22	A I have no idea about any of that.	22	MR. BENNION: Objection. Objection.
23	Q Do you know who Labor Smart's	23	May call for a legal conclusion.
24	subsidiaries or affiliates are as of today?	24	BY MR. HARVEY:
25	A No, sir. No, sir.	25	Q I'm sorry. I didn't hear your answer.

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1	A That's more Mike than -- than me. I	1	CERTIFICATE OF TRANSCRIBER
2	don't want to confuse things.	2	I, Krystin Spolar, CET, do hereby certify
3	MR. HARVEY: Let me just glance through	3	that this transcript was prepared from the digital
4	my notes for one second. We don't even need to go	4	audio recording of the foregoing proceeding; that
5	off the record because it's probably going to be	5	said proceedings were reduced to typewriting under
6	15, 30 seconds.	6	my supervision; that said transcript is a true and
7	BY MR. HARVEY:	7	accurate record of the proceedings to the best of
8	Q That's all I have for you, Mr. McBride.	8	my knowledge, skills, and ability; and that I am
9	Thank you.	9	neither counsel for, related to, nor employed by any
10	A Yes, sir. Glad you got home safe.	10	of the parties to the case and have no interest,
11	MR. BENNION: No -- no -- no questions.	11	financial or otherwise, in its outcome.
12	MR. HARVEY: Thanks.	12	<i>Krystin Spolar</i>
13	THE VIDEOGRAPHER: All right.	13	<hr/>
14	THE WITNESS: All right, guys.	14	Krystin Spolar, CET
15	THE VIDEOGRAPHER: This marks the end	15	Planet Depos, LLC
16	of the deposition of Toby McBride. The time on	16	December 6, 2024
17	the monitor is 11:14 a.m.	17	
18	(Off the record at 11:14 a.m.)	18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
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1	CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC		
2	I, Charlie McGrath, AAERT CER, the officer		
3	before whom the foregoing proceedings were		
4	taken, do hereby certify that any witness(es) in		
5	the foregoing proceedings were fully sworn;		
6	that the proceedings were recorded by me and		
7	thereafter reduced to typewriting by a		
8	qualified transcriptionist; that said digital		
9	audio recording of said proceedings are a		
10	true and accurate record to the best of my		
11	knowledge, skills, and ability; and that I am		
12	neither counsel for, related to, nor employed		
13	by any of the parties to this case and have		
14	no interest, financial or otherwise, in its		
15	outcome.		
16			
17	<hr/>		
18	Charlie McGrath, AAERT CER, Notary Public, for the		
19	State of California		
20	December 6, 2024		
21			
22			
23			
24			
25			

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